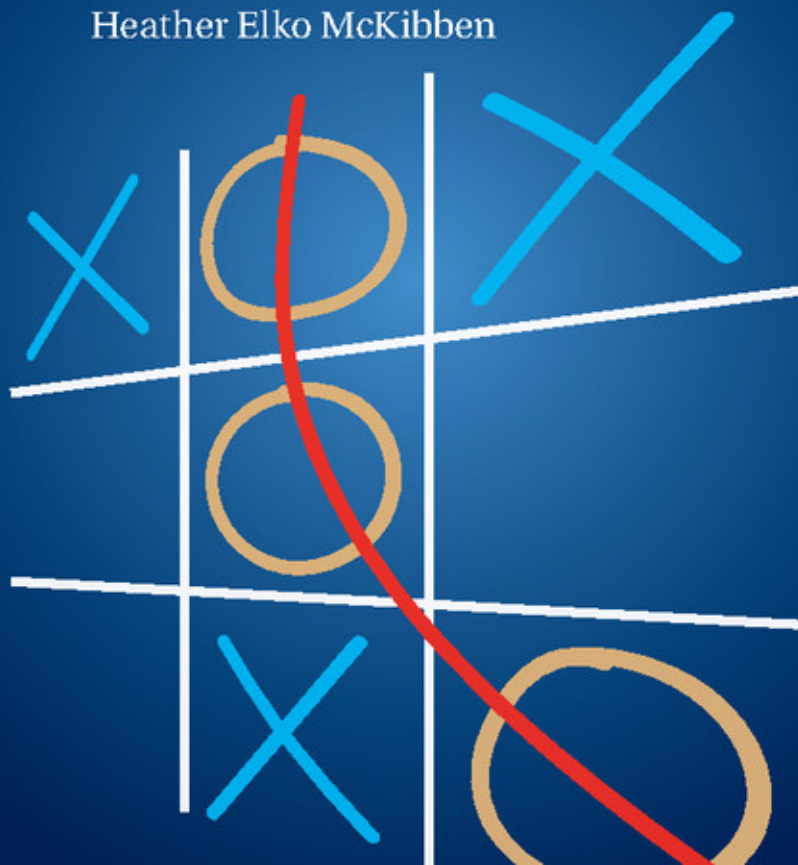


State Strategies in International Bargaining

Play by the Rules or Change Them?

CAMBRIDGE STUDIES IN INTERNATIONAL RELATIONS

Heather Elko McKibben



STATE STRATEGIES IN INTERNATIONAL BARGAINING

Bargaining in the international system is governed by rules, which shape and constrain states' bargaining behavior. However, these rules can be changed. When, why, and how do states bargain differently under different sets of rules? Drawing on original qualitative and quantitative evidence, this book demonstrates how the rules of the game influence the cooperative or coercive nature of the strategies adopted by all states in a negotiation. These effects influence each state's incentives regarding whether to play by the rules or to change them. Examining these incentives, as well as the conditions under which states can act on them, McKibben explains the wide variation in states' bargaining strategies. Several bargaining interactions are analyzed, including decision-making in the European Union, multilateral trade negotiations, climate change negotiations, and negotiations over the future status of Kosovo. This book provides a rich understanding of the nuances of states' behavior in international bargaining processes.

Heather Elko McKibben is an assistant professor at the University of California, Davis. She received her Ph.D. in political science at the University of Pittsburgh. Prior to her current position, she held a postdoctoral research fellowship at the Niehaus Center for Globalization and Governance in the Woodrow Wilson School at Princeton University.

**STATE STRATEGIES IN INTERNATIONAL BARGAINING
PLAY BY THE RULES OR CHANGE THEM?**

Editors

Christian Reus-Smit

Nicholas J. Wheeler

Editorial Board

James Der Derian, Theo Farrell, Martha Finnemore, Lene Hansen,

Robert Keohane, Rachel Kerr, Jan Aart Scholte, Peter Vale,

Kees van der Pijl, Jutta Weldes, Jennifer Welsh, William Wohlforth

Cambridge Studies in International Relations is a joint initiative of Cambridge University Press and the British International Studies Association (BISA). The series aims to publish the best new scholarship in international studies, irrespective of subject matter, methodological approach, or theoretical perspective. The series seeks to bring the latest theoretical work in international relations to bear on the most important problems and issues in global politics.

CAMBRIDGE STUDIES IN INTERNATIONAL RELATIONS

- 133 Janina Dill
Legitimate targets?
Social construction, international law, and US bombing
- 132 Nuno P. Monteiro
Theory of unipolar politics
- 131 Jonathan D. Caverley
Democratic militarism
Voting, wealth, and war
- 130 David Jason Karp
Responsibility for human rights
Transnational corporations in imperfect states
- 129 Friedrich Kratochwil
The status of law in world society
Meditations on the role and rule of law
- 128 Michael G. Findley, Daniel L. Nielson and J. C. Sharman
Global shell games
Experiments in transnational relations, crime, and terrorism
- 127 Jordan Branch
The cartographic state
Maps, territory, and the origins of sovereignty
- 126 Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds.)
The persistent power of human rights
From commitment to compliance
- 125 K. M. Fierke
Political self-sacrifice
Agency, body and emotion in international relations
- 124 Stefano Guzzini
The return of geopolitics in Europe?
Social mechanisms and foreign policy identity crises
- 123 Bear F. Braumoeller
The great powers and the international system
Systemic theory in empirical perspective
- 122 Jonathan Joseph
The social in the global
Social theory, governmentality and global politics
- 121 Brian C. Rathbun
Trust in international cooperation
International security institutions, domestic politics and American multilateralism

Series list continues after index

STATE STRATEGIES IN
INTERNATIONAL
BARGAINING

PLAY BY THE RULES OR
CHANGE THEM?

HEATHER ELKO McKIBBEN

University of California, Davis



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107086098

© Heather Elko McKibben 2015

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2015

Printed in the United Kingdom by Clays, St Ives plc

A catalogue record for this publication is available from the British Library

ISBN 978-1-107-08609-8 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

For my parents

CONTENTS

<i>List of figures</i>	xiii
<i>List of tables</i>	xiv
<i>Acknowledgments</i>	xv
<i>List of abbreviations</i>	xviii
1 Introduction: it's a question of strategies	1
A rule-compliant/rule-changing framework	11
Two-part analysis: summary	13
Two key implications	17
Where does it fit?	19
Game-theoretic literature	20
Negotiation analysis literature	22
Institutions literature	24
The argument: building on this literature	29
Overview of this book	29
PART I Rule-compliant/rule-changing framework	33
2 Typology of bargaining strategies	35
Rule-compliant strategies	35
Highly confrontational strategies	35
Somewhat confrontational strategies	38
Highly cooperative strategies	39
Somewhat cooperative strategies	40
Rule-changing bargaining strategies	42
BATNA-altering strategies	43
Issue linkage strategies	46
Summary of the typology	47
3 How states play by the rules	48
Contextual rule 1: issue linkage structure	49

	Implications for state bargaining strategies	51
	Empirical illustration: Kyoto Protocol negotiations	57
	Contextual rule 2: set of alternatives to agreement	61
	Implications for bargaining strategies	62
	Empirical illustration: Malta–United Kingdom naval base negotiations	64
	Contextual rule 3: absolute/relative gains context	66
	Implications for bargaining strategies and illustrative examples	70
	Summary of rule-compliant predictions	76
4	When and why states change the rules	78
	Rule-compliant versus rule-changing strategies	79
	Factor 1: characteristics of the bargaining setting	79
	Factor 2: states' material capabilities	81
	Factor 3: states' incentives to change the negotiation	84
	Variation in rule-changing strategies	95
	Negotiations between interdependent states	95
	Negotiations between non-interdependent states	98
	Summary of rule-changing predictions	100
	PART II Research design and empirical tests	103
5	Playing by the rules in European Union negotiations	105
	Background on EU decision-making	109
	The bargaining rules in the EU context	111
	Issue linkage structure	111
	Beneficial BATNA	113
	Absolute/relative gains context	114
	Statistical analysis: bargaining strategies in the European Union	116
	Set-up of statistical analysis	118
	Statistical results	120
	Illustrative case: Services Directive negotiations	125
	Illustrative case: Financial Perspective negotiations	135
	Financial perspective: bargaining power and absolute gains	136
	Financial perspective: strategies adopted	138
	Remember, bargaining is complex	140
6	Playing by the rules in GATT/WTO negotiations	144
	Background of the Uruguay Round negotiations	147
	"Rules of the game" in the Uruguay Round context	150
	Explaining Uruguay Round bargaining strategies: empirical analysis	155

	Dependent variable: cooperative v. confrontational strategies	156
	Set-up of empirical analysis	158
	Testing hypotheses 1 and 2	159
	Testing hypothesis 3	165
	Why not change the rules? The single undertaking	171
	The relation between playing by the rules and changing them	175
	Summary of the Uruguay Round negotiations	177
7	Changing the rules in climate change negotiations	178
	Choosing an issue linkage strategy	181
	Empirical analysis: statistical tests	187
	Copenhagen Climate Change Conference, 2009	191
	Background: issues and sources of contention at Copenhagen	192
	Bargaining strategies in the Copenhagen high-level segment	199
	Conclusions from climate change negotiations	212
8	Changing the rules in the Kosovo status process	214
	The Kosovo status process: background	215
	Negotiation 1: Kosovo–Serbia talks, 2006	218
	Negotiation 1: bargaining strategies adopted	220
	Additional background	222
	Negotiation 2: Kosovo–Serbia negotiations over the Ahtisaari proposal, 2007	223
	Negotiation 2: bargaining strategies adopted	227
	Negotiation 3: UN Security Council negotiations over draft resolution, May 2007	228
	Negotiation 3: bargaining strategies adopted	232
	Negotiation 4: Kosovo–Serbia talks, late 2007	234
	Negotiation 4: bargaining strategies adopted	235
	Forcing new UN Security Council negotiations	236
	Negotiation 5: UN Security Council negotiations on UNMIK reconfiguration, July 2008	240
	Negotiation 5: bargaining strategies adopted	242
	Negotiation 6: UN Security Council negotiations on UNMIK reconfiguration, November 2008	243
	Negotiation 6: bargaining strategies adopted	244
	Conclusion: comparisons to highlight key effects	245
	Summary of the analysis	248

9	Bargaining strategies and beyond	250
	Implications of the argument	252
	Implication 1: power in international bargaining	252
	Implication 2: the role of time in international bargaining	257
	Bargaining strategies and beyond	258
	<i>Appendix: sources and coding</i>	263
	<i>References</i>	284
	<i>Index</i>	300

FIGURES

- 3.1 The effects of absolute/relative gains on the zone of agreement, case 1: state with greater bargaining power values reaching agreement 68
- 3.2 The effects of absolute/relative gains on the zone of agreement, case 2: state with greater bargaining power does not value reaching agreement 68
- 5.1 Effect of bargaining power in a relative v. absolute gains context in the EU 124
- 6.1 Effect of powerful state valuing (versus not valuing) agreement in a relative gains setting in the GATT 168
- 7.1 Marginal effect of a one-unit increase in a state's GDP on the likelihood states with more costly BATNAs will use issue linkage 190

T A B L E S

2.1	Summary of variation in rule-compliant strategies	36
2.2	Summary of variation in rule-changing strategies	42
3.1	Contextual rules of the game	49
3.2	Possible bargaining outcomes in issue linkage example	53
3.3	Summary of rule-compliant hypotheses	76
4.1	Summary of rule-changing hypotheses	100
5.1	Testing hypotheses 1–3 in EU case	121
6.1	Testing hypotheses 1–3 in the GATT/WTO case	160
6.2	Closer examination of hypothesis 3	167
7.1	Testing hypotheses 4 and 5 in the climate change case	188

ACKNOWLEDGMENTS

No project is developed in isolation, and this one is no different. Many people have helped to make this project possible, as well as to help me see it to fruition. I am very lucky to have such support behind me.

I would first like to thank members of my dissertation committee who supported the development of my early ideas, which provide the basis for this project. Without their help and guidance, I would never be where I am today. Chuck Gochman and Alberta Sbragia served as chairs of my committee, and Robert Keohane willingly took on me and my project even though I was at another university. They were always willing to talk through ideas and provide instrumental feedback and criticism. They are some of the most giving people I have met – providing their time and assistance whenever I needed it. Most importantly, they are incredibly easy to talk to and work with, and I enjoyed every minute of doing so! I am very lucky to have had their help and support in my early forays into academia. I could not have asked for more wonderful people to work with, and am forever indebted to them.

Expanding the dissertation project and developing it into what it is today also took a lot of effort and support. A postdoctoral position at the Niehaus Center for Globalization and Governance at Princeton University provided me with this opportunity. I am indebted to the administrators of this program, most especially its director, Helen Milner. My fellow postdocs were also incredibly helpful, reading my work and sitting through multiple talks I gave as I worked to develop it. I would like to thank them all: Arang Keshavarzian, Susan Hyde, Christina Schneider, Ben Shepherd, T. Camber Warren, and Matthew Winters. Robert Keohane and Andrew Moravcsik also provided some guidance during my tenure as a postdoc as I worked to organize and expand the project. I would also like to thank Pat Trinity, whose assistance was instrumental in helping my postdoc experience run smoothly, and thus be productive.

Of course, even after the basis of a project has been developed, much help is needed in its refinement. In addition to those laid out above, many

others have been willing to talk through and/or read various parts of the project, and their input has helped to make its completion possible. I would like to thank Terrence Chapman, Katharine Floros, Kyle Joyce, Jeannette Money, Carolina Garriga de Phillips, John Odell, Brian Phillips, and Brian Rathbun. Two people, in particular, were willing to read multiple drafts of multiple chapters. I would like to thank them specifically: Daniel Kono and Zeev Maoz. I am incredibly lucky to work with such supportive colleagues.

One other individual was also central to my academic development and to the creation of my research program. David Bearce was always willing to help me, fostering my early ideas and encouraging me to pursue them. He has provided support from the very beginning to today, and I cannot thank him enough for everything he has done for me.

In developing this project, I also received support from state negotiators out in the “real world.” Interviews were conducted in Brussels from 2005 to 2010 with members of twenty-five of the permanent representations of the various member states to the European Union. These individuals worked in the Committee of Permanent Representatives I and II, the Political and Security Committee, and various issue-specific working groups. Interviews were also conducted with members of the European Union’s Council Secretariat and the European Commission. While these individuals want to remain anonymous, their input was vital to my ability to execute this project, and I am very thankful for their time and efforts.

None of this would have been possible without financial support. I would like to thank both the European Union Center of Excellence at the University of Pittsburgh and the Institute for Governmental Affairs at the University of California, Davis for the opportunities and assistance they provided. Without the financial support of these institutions, the fieldwork for this project would not have been possible. Madeline Weeks and Frank Yuan also provided valuable research assistance.

Finally, I cannot thank my family enough for the support they have provided outside the academic setting. My husband, Scott, has been with me every step of the way, seeing me through all the trials and tribulations that came with carrying out this project. He is my rock and I am the luckiest person in the world to have him. His love and support help keep me going. My sister, Claire, has been the best friend anyone could ask for. She has always been there for me and always keeps me laughing. I would also like to thank my brother, Peter, and my Mom and Dad for their willingness to read through several “takes,”

as I worked to hammer out some of the project details. Finally, I owe a huge thank you to my parents – Constance and David Elko. They have supported me from the very beginning – always encouraging me to pursue what it is that I wanted to do and challenging me to do it well. My Mom always said, “Work hard and have fun!”. And I do.

ABBREVIATIONS

AOSIS	Alliance of Small Island States
BAP	Bali Action Plan
BASIC	Brazil, South Africa, India, and China
BATNA	best alternative to a negotiated agreement
CAP	Common Agricultural Policy (EU)
CCS	carbon capture and storage
CDM	Clean Development Mechanism
CO ₂	Carbon dioxide
COP	Conference of the Parties
COREPER	Committee of Permanent Representatives (EU)
EC	European Community
EEC	European Economic Community
EIG	Environmental Integrity Group
EMS	European Monetary System
EU	European Union
EULEX	European Union Rule of Law Mission
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GNG	Group on Negotiations in Goods (GATT)
GNI	gross national income
GNS	Group on Negotiations in Services (GATT)
ICBM	intercontinental ballistic missile
IPR	intellectual property rights
IR	international relations
KP	Kyoto Protocol
LCA	long-term cooperative action
LDC	least developed country
MFN	most-favored nation
MRV	measurement, reporting, and verification
NAFTA	North American Free Trade Agreement

NAMA	nationally appropriate mitigation action
NATO	North Atlantic Treaty Organization
NG	negotiating group
PSC	Political and Security Committee (EU)
REACH	Regulation, Evaluation, and Authorization of Chemicals
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body on Scientific and Technological Advice
SLBM	submarine-launched ballistic missile
START	Strategic Arms Reduction Treaty
TRIMs	trade-related investment measures
TRIPs	trade-related aspects of intellectual property rights
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNMIK	United Nations Interim Administration Mission in Kosovo
UNSC	United Nations Security Council
VER	voluntary export restraint
WTO	World Trade Organization

Introduction: it's a question of strategies

Bargaining is one of the most common forms of state interaction, and a central means through which things get done in the international system. Bargaining as a process is widespread, and varies significantly from interaction to interaction as states adopt a wide range of *strategies* across the different negotiations in which they are involved. In some of these interactions, states use threats – threats to veto the agreement or to use force or sanctions against their bargaining opponents absent some concession from them. In other interactions, states are more cooperative, offering concessions of some kind to their bargaining opponents.

Consider the variation that exists in the bargaining strategies adopted in different negotiations by the United States alone. In the early 1980s, the United States used economic sanctions against several developing countries in order to force them to include issues that were important to US interests on the agenda of the upcoming multilateral trade negotiations.¹ One such issue involved the protection of intellectual property rights. However, when dealing with that very same issue in 2001, the United States conceded to the demands of developing countries by accepting a declaration placing limits on the applicability of the World Trade Organization (WTO)'s intellectual property rights protections.² It even made this concession despite strong opposition from its powerful pharmaceutical industries.³ Illustrating another type of cooperative strategy, the United States offered “side payments” in the form of military aid to Israel and Egypt in order to get them to sign a peace agreement during the negotiation of 1978 Camp David Accords.⁴ However, the United States has also adopted confrontational bargaining strategies in negotiations dealing with other sensitive issues in the Middle East. In the late 2000s and

¹ For more on these strategic actions, see [Watkins \(1992\)](#).

² See [World Trade Organization 2001](#) for the text of the declaration.

³ For a discussion of this bargaining interaction and the concessions made by the United States, see [Odell and Sell \(2006\)](#).

⁴ See [US Department of State 2010, 2011](#).

early 2010s, the United States threatened to use sanctions against Iran (and did, in fact, employ several rounds of multilateral sanctions against it) in order to convince it to stop its pursuit of nuclear technology.⁵ Moreover, in 2012, the United States threatened to veto Palestine's application for statehood in the United Nations (UN) Security Council to try to get the other states of the Security Council to agree not even to put the issue up for a vote.⁶

These examples represent just a handful of the possible types of bargaining strategies that states adopt – even when bargaining over similar issues. This variation in strategies is not only substantively significant, but it has important implications for the outcomes reached in the bargaining process, as well as for states' ability to engage in future cooperative interactions. Not only can the adoption of highly coercive strategies harm the relationship between states,⁷ but if those strategies are not met with concessions in return, an agreement is not likely to be reached. The degree of concessions offered by states on each side of the bargaining interaction also affects how their interests will be distributed in any agreement that is reached – thus affecting their willingness to comply with that agreement down the road.⁸

Understanding when and why states adopt different types of bargaining strategies therefore has important implications for states' ability to cooperate – a central subject in the study of international relations (IR). However, while our understanding of cooperation in *non*-bargaining interactions is fairly robust,⁹ our ability to systematically explain variation in states' *bargaining* behavior lags significantly behind. Indeed, such a wide range of strategies is available in any given bargaining setting, and the choices negotiators make are characterized by such nuance, that the *ex ante* identification of the range of strategies that could be adopted in

⁵ Calabresi 2008.

⁶ For example, see the discussion of Krever and Vaccarello (2011). Moreover, as Riyad Mansour (the Palestinian envoy to the UN) argued, "We knew from the beginning ... that we might not be able to succeed in the Security Council because there is a powerful country that has the veto power" (quoted in Krever and Vaccarello 2011).

⁷ Walton and McKersie 1965; Pruitt 1981; Sebenius 1983.

⁸ For examples of works highlighting the effect of bargaining processes on the future enforcement of the agreements reached, see Fearon (1998) and Bearce, Floros, and McKibben (2009).

⁹ For a sample of these works examining cooperation outside the bargaining process, see the myriad studies in the literature on agreement enforcement and compliance (e.g., Axelrod 1984; Keohane 1984; Axelrod and Keohane 1985; Oye 1986; Fearon 1998; and many more). In addition, for a recent review of the compliance literature, see Simmons (2010).

any given bargaining setting is extremely difficult. This affects our ability to construct rigorous theoretical and empirical analyses of bargaining strategies.¹⁰ Indeed, bargaining is often described as an “art” by both scholars and practitioners.¹¹

The goal of this book is to provide theoretical and empirical leverage to help us identify overarching patterns that exist in the way states approach the “art” of international bargaining.¹² To do so, it highlights two key dimensions on which states’ bargaining strategies can vary. The *first dimension* of variation in bargaining strategies captures differences in how a state’s strategy relates to the “rules of the game” – the factors that “structure” the bargaining interaction. This dimension of variation captures whether a state *plays by those rules* or *seeks to change them*. The *second dimension* of variation in strategies captures the *cooperative v. confrontational* nature of a state’s rule-compliant or rule-changing behavior – defined in terms of the nature of the concessions a state makes. *Cooperative strategies* are characterized by offers of concessions to a bargaining

¹⁰ For more on the difficulty of constructing a rigorous analysis of bargaining strategies, see Tsebelis (1990). Some scholars even go so far as to argue that the bargaining strategies states adopt, and the way that they unfold across the bargaining process, are inevitably unique to each individual interaction. For example, many negotiation theorists highlight the significant variation that exists in state bargaining strategies, and argue that each bargaining interaction is unique. Each state has its own negotiators with their own individual cognitive biases (see, e.g., Kramer and Messick 1995; Odell 2000; Jönsson 2002), who each come from a particular cultural background, which differs widely across states (see, e.g., Faure 2002). These negotiators make their own specific strategic choices, which then play out in a unique way as the negotiation unfolds (see, e.g., Zartman and Berman 1982; Odell 2000; Rubin 2002). Moreover, each negotiation has its own temporal and social context (see, e.g., Kramer and Messick 1995), its own power configuration (see, e.g., Singh 2008), its own dynamics of coalition formation (see, e.g., Zartman 1994 and Hopmann 1996), and its own leaders with their own leadership styles (see, e.g., Underdal 1994; Hopmann 1996). To date, process-tracing case studies have thus been (almost) the only method used to empirically analyze when, why, and how states use different bargaining strategies. While these case studies are extremely helpful in illuminating key aspects of international bargaining interactions, they can only get us so far.

¹¹ See, e.g., Nierenberg 1968; Raiffa 1982; Nierenberg and Calero 2009. Riker (1986) generalizes this claim, categorizing all forms of “political manipulation” of the rules of the game as an art.

¹² Note that this analysis treats states as unitary actors. While there are many important works demonstrating the importance of domestic politics and principal-agent relationships and their effects on international bargaining (e.g., Putnam 1988; Mo 1995; Tarar 2005), the unitary actor assumption is used in order to keep an already complex analysis as simple as possible. There is clearly room for future work to analyze the two-level game’s effect on states’ adoption of the strategies highlighted throughout this book.

opponent, while *confrontational strategies* are characterized by actions designed to extract concessions from them.

These dimensions can be identified in a wide variety of bargaining interactions, and can therefore be used to meaningfully compare states' strategies across them. Analyzing and comparing states' strategies along these two dimensions allows us to highlight patterns in states' bargaining strategies, despite the fact that those strategies can be substantively quite diverse.

Before examining real-world international negotiations, the following simple, non-IR example helps to illustrate these two dimensions of bargaining strategies, as well as to provide insights into how we can move forward in our analysis of them. Consider a couple who have just purchased a new home, and are negotiating over what, if any, renovations to make. Even though there is no defined *procedure* governing negotiations between the couple, two factors still shape their bargaining interaction. While these two factors are not necessarily "rules" in the way we think about them in the everyday sense of the term, they "structure" the couple's bargaining interaction in important ways. They therefore serve as key "*contextual rules*" that govern their bargaining interaction.¹³

The first contextual rule structuring the couple's bargaining interaction is the *set of issues on the bargaining agenda*. In this example, the bargaining agenda is characterized by the renovations they are considering. The second contextual rule structuring their interaction is the *no-agreement alternative* – the outcome that will occur if an agreement is not reached in the negotiation. In this example, the no-agreement outcome is characterized by the current state of the house.

To more explicitly define the bargaining agenda and no-agreement outcome in this illustrative example, consider two renovations on the table for consideration: (1) removing a concrete patio to create a garden area, and (2) upgrading the kitchen to a more modern look. The outcome associated with "no agreement" is characterized by the concrete patio remaining in place, and the kitchen remaining in its old-fashioned state. The wife really wants to remove the concrete patio so she can create a garden, as gardening is her favorite hobby. She would also prefer not

¹³ In game-theoretic terms, they would be defined *ex ante* in the set-up of the bargaining game, and are therefore "rules of the game" according to the definition I use throughout the book. Note that the term "context" is used in a way similar to that of Singh (2008). However, the specific contextual factors that Singh focuses on – the number of issues, the number of actors, the number of domestic coalitions, and the market power of domestic firms – differ from the specific contextual factors that are analyzed here.

to spend a lot of money upgrading the kitchen. In contrast, her husband really wants to renovate the kitchen, as gourmet cooking is his favorite hobby. He would also prefer to avoid the manual labor associated with the patio removal.

Given this structure of the interaction, what bargaining strategy could the wife adopt in order to get her husband to agree to remove the concrete patio? Her available strategies vary along the two dimensions highlighted above – she could play the rules or change them, and she could do so in a cooperative or confrontational way.

Consider her rule-compliant options. The wife could adopt a cooperative rule-compliant strategy by agreeing to renovate the kitchen if her husband concedes and helps to remove the patio. The offering of concessions on the kitchen issue indicates that it is cooperative in nature. The fact that these concessions are made without adding or removing any issues from the agenda means that it is also rule-compliant. More confrontationally, the wife could also threaten to refuse to accept any renovations absent the removal of the patio – in essence, vetoing the full range of non-patio-removing options. The fact that a veto threat is made indicates that this strategy is confrontational in nature. The fact that this threat is made without altering the no-agreement outcome – just threatening to impose it – means that it is also rule-compliant.

Rule-changing strategies are also available to the wife. She could offer to buy the large high-definition television that her husband has had his eye on if he agrees to help with the patio removal. This strategy is rule-changing because the wife is bringing a new issue into the discussions, creating a new context within which an exchange of concessions could take place. This rule-changing strategy is also cooperative in nature because she is linking the new TV issue to the negotiation by offering concessions on it. More confrontationally, the wife could take a sledgehammer and begin to try to remove the patio herself. This latter strategy could win her concessions by creating a new bargaining context with a new no-agreement outcome (which is worse for her husband than the original status quo). Not reaching an agreement would no longer be defined by the existence of the concrete patio, but by having to live with a concrete patio with cracks and a big hole in it. This worsened no-agreement outcome might be bad enough that her husband would not be willing to live with it, pushing him to help her remove the patio completely. Because she is using a coercive action to win concessions with this strategy, it is confrontational in nature. Because she is doing so by changing the no-agreement outcome, it is also rule-changing.

All four of these strategies can help the wife win concessions from her husband regarding the patio removal issue. The cooperative, rule-complaint strategy wins these concessions by offering concessions on another agenda item in return. The confrontational rule-compliant strategy extracts the patio concession from her husband by threatening to (indefinitely) veto the renovation he wants. The cooperative rule-changing strategy wins these concessions by offering a concession in return, with that concession coming on an issue outside the current bargaining agenda. The confrontational rule-compliant strategy extracts those concessions by worsening the no-agreement outcome for her husband so that he is compelled to concede in order to avoid his now-costly no-agreement alternative.

When and why would the wife adopt these different strategies? The answer lies in the characteristics of the contextual rules of the bargaining game in which the wife finds herself. When the contextual rules are laid out as described above, the wife would not have to change the rules of the game in order to win on the patio issue. She could get her husband to concede under the current set of rules. Given the distribution of the couple's interests on the two renovation issues – that is, that each places most value in winning on different issues that are on the table – a trade of concessions between the patio and kitchen could be effective in eliciting concessions. A veto threat could also be effective because the husband places importance on being able to get the kitchen renovated.

However, what if the renovations are *not* valued in this way? What if the husband does not care about renovating the kitchen, nor does he want to exert the effort to remove the concrete patio? If this is the case, the wife cares about both renovations more than he does. In other words, the renovation issues are “not valued differently” by the husband and wife in this second case – that is, they do not each place most importance on different issues as they did in the original example. If the wife does not alter the bargaining rules in some way, she will therefore have no leverage to work with. She cannot offer an exchange of concessions to win agreement on the patio removal because being able to renovate the kitchen is not something the husband cares about. He will receive no benefit to offset the cost of helping to remove the patio if he agrees to this exchange. Threatening a veto is also not likely to help win concessions because the husband is happy to remain at the status quo on both issues.

If this second example characterizes the bargaining situation, the wife *has* to adopt a rule-changing strategy in order to gain leverage in the bargaining interaction. She can do so by changing the set of issues on the

table by bringing in a new issue that her husband does care about (the HDTV), or she could do so by taking a sledgehammer to the patio, thus making the no-agreement outcome more costly for her husband than helping to remove the patio would be. Each of these strategies changes the rules of the game, creating a *new* bargaining context within which an exchange of concessions or a veto threat could be effective.

While this illustrative husband–wife example might appear trivial, the dynamics that it highlights are clearly present in international bargaining interactions – just in more complex ways. Building on the ideas presented by this example, we can begin to explain key dynamics in real-world bargaining processes, as well as to understand their effect on how bargaining processes unfold over time.

Take the following two real-world examples. First, consider the multi-lateral negotiations that took place in 2009 at the Copenhagen Climate Change Conference. Variation clearly existed in the strategies states adopted over the course of this bargaining process. In the early days of the conference, states of the European Union (EU) made strong demands on India and China. They argued that even though India and China had developing country status, as major greenhouse gas emitters, they would have to adopt legally binding emission reduction commitments to help mitigate climate change. On the other side, India and China vetoed proposals for agreement that included such a requirement, despite the fact that those proposals were supported by a coalition of developed countries and a large majority of developing countries.¹⁴ The result was heated debate and “raised voices” from both sides of the bargaining table,¹⁵ and an unwillingness from both sides to budge from their position. Each attempted to win concessions from the other side via the use of demands and veto threats. Their strategies were *confrontational* (and rule-compliant) in nature.

In the final days of the conference, however, their strategies changed significantly, becoming highly cooperative in nature. India and China both made political commitments, stating that they would work to reduce their greenhouse gas emissions – the first such commitment made by these states in the history of the UN climate change negotiations. The EU states also conceded, agreeing that those political statements of intent did not have to come with any hard commitment to explicit reduction numbers – a point on which the EU states had been completely inflexible early

¹⁴ Miliband 2009.

¹⁵ Rapp, Schwägerl, and Traufetter 2010.

in the conference. States' strategies in these final days of the conference were *cooperative* (and rule-compliant) in nature.

Using the conceptualization of bargaining strategies proposed here, we can see the important changes that occurred in states' behavior over the course of this bargaining process – shifting from the use of confrontational strategies to the use of cooperative ones. The question then arises: *why did their bargaining strategies change so drastically?* The shift took place in a matter of days, and the distribution of the states' material power and interests – the standard explanations for variation in state behavior – remained unchanged. Why, then, did we see a shift in their strategies?

The answer lies in a change in the contextual rules governing their bargaining interaction. Between these two interactions, Brazil, South Africa, India, and China (the BASIC countries), together with the United States, engaged in their own private negotiations. Within this meeting, they eliminated issues from the discussion that went against their own particular interests – specifically, the idea that the agreement would be legally binding on states. The United States and the BASIC countries then agreed to *non-legally* binding terms on the remaining issues. It was easy for them to make such concessions when the issue they most opposed had been removed from the table. They then “sold” this agreement back to the plenary as a take-it-or-leave-it offer. When faced with the choice between this non-legally binding agreement and remaining at the status quo with no agreement at all, the EU states (as well as others) had little choice but to drop their demands. The end result was an exchange of concessions across the remaining issues (albeit concessions made grudgingly by the EU states and their allies).

While there were clearly other factors at work, understanding how the the United States and BASIC countries changed the contextual rules of the game by altering the bargaining agenda is important for understanding why cooperative strategies were adopted by India, China, and the EU states in the final days of the Copenhagen Climate Change Conference, but not earlier.

A second example, of negotiations dealing with trade-related aspects of intellectual property rights (TRIPs), further illustrates this point. In the 1980s, securing the protection of intellectual property rights at the international level arose as a very important issue for the United States, whose industries wanted to have their patents recognized and protected by other states in the international system. Working to protect these interests, the United States threatened to withdraw completely from the multilateral trade negotiations if the TRIPs issue was not put on the agenda of the

upcoming GATT Uruguay Round.¹⁶ Moreover, once the Uruguay Round began, the United States fought hard in the negotiations to win on this issue, even threatening to not agree to other parts of the trade agreement absent concessions on this issue. By doing so, the United States secured significant concessions from the developing countries. The result was the Agreement on Trade-Related Aspects on Intellectual Property Rights (the “TRIPs Agreement”) – a key part of the overall agreement reached in the Uruguay Round.

The TRIPs issue came up again as states were preparing for the start of the next round of trade negotiations. At the WTO’s 2001 Ministerial Conference in Doha, a declaration referencing the TRIPs Agreement was proposed. The declaration would lay out conditions under which a state could circumvent the provisions of this agreement. It would allow developing countries’ pharmaceutical industries to violate patent protections in order to manufacture cheaper, generic drugs to address public health crises. Despite strong opposition from its own pharmaceutical industries whose patents would be violated by such actions, the United States conceded to the demands of the developing countries and agreed to this declaration. The tables were turned in this new negotiation – with the United States making the concessions.

A significant shift in the the nature of the states’ strategies can again be seen by examining the variation in the cooperative/confrontational dimension of these strategies. In the 1980s, the United States adopted highly confrontational strategies – exerting veto threats in the agenda-setting round and working to win concessions during the round itself – while the developing states made cooperative concession offers in return. In 2001, however, it was the developing countries that adopted the more confrontational strategies and the United States that was cooperative in return.

Why was there such a stark difference in their bargaining strategies, despite the fact that the same TRIPs issue was involved? Power and interests are clearly *part* of the story. When bargaining over this issue during the Uruguay Round, the “more powerful” United States adopted strategies designed to win concessions from the “weaker” developing countries. However, it cannot *just* be power and interests at work in these cases. In the negotiations in 2001, the United States made concessions to its developing country opponents, despite the fact that they were negotiating the

¹⁶ Winham 1989: 59.

same TRIPs issue, that their interests were largely the same, and that their relative capabilities remained the same.

Looking at variation in their bargaining strategies more carefully, an explanation comes to the forefront. In the lead-up to the 2001 Doha negotiations, the developing countries altered the no-agreement outcome of these TRIPs negotiations by reframing the issue in terms of protecting public health in times of national crisis, rather than having it framed in terms of protecting trade interests.¹⁷ By changing the frame of the negotiations, the developing countries raised the domestic political costs to the United States associated with rejecting an agreement. Not accepting a declaration designed to protect public health in order to protect the interests of US pharmaceutical companies became politically untenable.¹⁸ Agreeing to the declaration was therefore less costly than the new alternative to agreement that the US government now faced.

Two questions therefore arise in the analysis of the complex and changing nature of states' bargaining strategies. *The first question has to do with the effect that the rules of the game have in shaping the cooperative/confrontational nature of states' rule-compliant strategies.* When are states likely to offer concessions, as India, China, and the EU states did in the final days of the climate change conference, as the developing countries did in the 1980s TRIPs negotiations, and as the United States did in the 2001 TRIPs negotiations? The husband/wife example provides some preliminary insights. Both the husband and wife were willing to make concessions (via a mutually beneficial exchange) when they each wanted a different renovation for the house. The husband was also willing to concede on his own when he faced having to live with a broken, cracked patio if he did not do so. Two factors are therefore important to consider: (1) whether or not the issues on the table are "differently valued" and/or (2) whether or not one of the sides faces a costly no-agreement alternative. These factors were clearly present in the climate change and TRIPs negotiations.

The second question analyzes the conditions under which a state will have an incentive to change the current set of rules. When and why would a state alter the bargaining agenda as the United States and BASIC countries did in the Copenhagen conference? And when and why would a state worsen its opponent's no-agreement outcome as the developing

¹⁷ Odell and Sell 2006.

¹⁸ Ibid.

countries did in the TRIPS negotiations? The husband/wife example is again illuminating. The wife had to change the rules of the game when the current rules were characterized by the husband caring little about the kitchen renovation. When this was the case, she could not win the concessions she wanted on the patio issue. She had to change the contextual rules to gain the leverage she needed to win those concessions. This condition was again present in the climate change and TRIPs negotiations. The inability to win concessions in the first part of the negotiations was a key factor that drove certain states to change the rules of the game in these cases.

Note that the answer to the second question depends on the answer to the first. The incentive to change the rules of the game depends on the effects that the current rules have on the cooperative nature of states' strategies. It is only when concessions are not likely to be received under the current set of contextual rules that a state needs to change them. The absence of the two key factors that lead to the adoption of cooperative, rule-compliant strategies is therefore likely to lead to the adoption of rule-changing ones.

The two dimensions of variation in state bargaining strategies therefore *interact* in important ways to help us understand the dynamic nature of bargaining interactions. We need to understand both dimensions of variation to understand international bargaining processes and how those processes unfold over time. Systematically analyzing both dimensions (and the interplay between them) is a unique contribution of this book. By doing so, we can gain the leverage we need to construct a general and systematic theory of international bargaining while retaining enough complexity to understand a wide variety of different bargaining processes.

A rule-compliant/rule-changing framework

This book lays out a systematic approach for understanding the complex process of international bargaining. "*Bargaining*" (or *negotiating*)¹⁹ refers broadly to any decision-making process where states formally discuss an issue for a potential joint agreement. While states have conflicting interests over the distributional nature of the outcome of a bargaining

¹⁹ The terms "bargaining" and "negotiating" are used interchangeably. While some scholars draw a distinction between these concepts, others treat them as equivalent. This latter approach is the one adopted here, consistent with key works in the study of international bargaining (e.g., Odell 2000).

process, they also usually (though not always) share at least some degree of common interest in reaching an agreement.²⁰

To begin to understand international bargaining processes, this book systematically analyzes states' "*bargaining strategies*" – the set of observable tactics each state adopts as it strives to pursue its interests, while responding to the rules of the game and the behavior of the other states involved. This focus on strategies deviates from more mainstream empirical analyses of international bargaining, which focus on explaining bargaining initiation (i.e., when, why, and how states get to the bargaining table),²¹ or bargaining outcomes (i.e., when and why an agreement is reached).²² While studying these other facets of international bargaining is clearly important, focusing only on initiation and outcomes leaves us with a limited understanding of what states do in the dynamic process in between.²³ Moreover, our understanding of bargaining outcomes is

²⁰ This argument – that states usually have both common and conflicting interests in bargaining situations – stems from [Schelling \(1960\)](#). However, in some cases, bargaining occurs even if one of the parties does not have an interest in reaching an agreement. For example, this type of case characterizes negotiations in the UN Security Council where a permanent member has made it clear that it will veto a proposal for agreement, other members go ahead with the negotiations anyway, and the permanent member then vetoes the agreement. Just because this particular permanent member state did not have an interest in reaching an agreement does not mean that a bargaining process worthy of study did not take place. All joint decision-making processes characterized by discussions leading to a potential agreement are therefore considered in this analysis.

²¹ For analyses of bargaining initiation and prebargaining, see [Stein 1989](#); [Huth and Allee 2003](#); [Bearce, Floros, and McKibben 2009](#); [Ghosn 2010](#).

²² For examples of systematic analyses of bargaining outcomes, see [Schultz 2001](#); [Allee and Huth 2006](#); [Ghosn 2010](#). Note that in most negotiations, analyses of "outcomes" focus on whether or not agreement is reached. In crisis bargaining, analyses of "outcomes" focus on whether or not states engage in conflict, as the lack of agreement leads to conflict in these types of bargaining interaction.

²³ While there is a large body of current literature that does highlight the dynamic nature of international bargaining, these analyses are almost all limited to small-N case studies. This includes the literature on international negotiations (e.g., [Breslin and Rubin 1991](#); [Berton, Kimura, and Zartman 1999](#); [Kremenjuk 2002](#); [Singh 2008](#)), the more general "negotiation analysis" literature (e.g., [Walton and McKersie 1965](#); [Fisher and Ury 1981](#); [Lax and Sebenius 1986](#); [Lax and Sebenius 2006](#)), as well as works that blend the two (e.g., [Odell 2000](#); [2006](#)). These studies have clearly contributed to our understanding of international negotiations. However, the problem for political science researchers who seek to identify patterns and regularities in international interactions – even in dynamic and complex processes such as these – is how to analyze these dynamics in a *systematic* and *consistent* way across very different bargaining interactions. In other words, these studies do not provide systematic, large-N tests to help explain and predict the conditions under which patterns and regularities will occur, whether these hypothesized effects exist when controlling for other important factors, and how various factors *interact* to impact state bargaining strategies. This is what I seek to do.

incomplete without taking into account the *changes* that can occur in the structural characteristics of the game – characteristics that most studies use to explain bargaining outcomes.

The goal of this book is to address these issues. To do so, it lays out a two-stage analysis. Together, these two stages capture the interactive process that exists between states' bargaining strategies and the rules of the bargaining game they are playing. *The rules of the game constrain states' bargaining strategies, and their bargaining strategies can also influence those rules.*²⁴ To capture these interactive effects, the first stage of the analysis focuses on analyzing variation in states' rule-compliant behavior – explaining how the rules of the game affect when and why states are likely to offer concessions, and which states are likely to do so. Then, taking into account these effects, the second stage of the analysis focuses on variation in states' rule-changing behavior – explaining how the *anticipation* of concessions (or lack thereof) that stem from the current set of rules creates incentives for states that have the ability to change the rules of the game actually to do so. Analyzing these two stages provides a way to explain and understand dynamic bargaining processes.

Two-part analysis: summary

When constrained by the rules of the game, a state is likely to offer a greater degree of concessions to its bargaining opponents (i.e., to adopt a *more cooperative bargaining strategy*) under several conditions. Two of these conditions were highlighted in the discussion above. *First, concessions are more likely to be adopted by all bargaining actors when opposing sides place most value on winning on different issues.* Consider the house renovation example. When the husband cared about the kitchen renovations and the wife cared about the patio removal, it was easy for the husband and wife to trade concessions across those issues because they valued them differently. In this situation, the costs of conceding to the other on the issue that they did not care about was easily overcome by the benefit of winning on the issue they valued most.

However, when the husband did not care about the kitchen renovations, this type of trade-off was not possible. The husband did not want to put in the work to take out the patio, and the cost of agreeing to do

²⁴ Bargaining processes therefore play out in a way that is similar to how we can conceptualize the international system overall, where *agents and structure interact*, influencing each other in important ways (Braumoeller 2013).

so could not be overcome by the wife agreeing to remodel the kitchen. The husband therefore had no incentive to concede on the patio issue. In return, the wife therefore had no incentive to go forward with the kitchen renovations. In this latter situation, the husband and wife did not value the issues differently, and a lack of concession exchange followed. The degree to which the issues on the table are differently valued therefore has important effects on the incentives to make concessions that bargaining actors have.

Second, a bargaining actor is more likely to offer concessions when it faces a costly alternative to agreement – that is, its best alternative to a negotiated agreement (BATNA) is costly. Again, consider the house renovation example. Regardless of the other issues available for trade, when the no-agreement outcome was characterized by the original state of the patio, the husband had significantly less of an incentive to offer concessions on this issue than he did after the wife took the sledgehammer to it. Even without being able to win on the kitchen issue, the husband might still agree to remove the patio in order to avoid having to look at the cracks and hole in it that his wife had created. The costliness of living with the no-agreement alternative after the sledgehammer incident creates an incentive for the husband to offer concessions. In contrast, when he could happily live with the patio existing in its original state, the husband had little incentive to agree to help remove the patio without getting something in return. The costly (or beneficial) nature of the no-agreement alternative therefore also creates incentives for the offering of concessions (or lack thereof).

To these two basic conditions we can also bring a third contextual factor that is particularly relevant when we talk about international bargaining – the degree to which the bargaining actors focus on the *absolute gains* they receive from a particular bargaining outcome or the gains they receive *relative to* the other side. Whether or not the actors focus on absolute or relative gains has a significant impact on the ability of one side to win more concessions from the other.

The prediction about the bargaining strategies states will adopt in response to their BATNA clearly applies in a setting in which the bargaining actors focus on the absolute gains they receive from an agreement. In this example, the husband and wife each focuses only on the costs/benefits that they each derive from a particular outcome. Even the most extreme situation can come about – the one in which the husband concedes on the patio issue post-sledgehammer without receiving anything in return. When making his decision, the husband weighs the cost

of living with the no-agreement outcome – a patio with cracks and a hole in it – against the cost of agreeing to the patio removal. If living with the cracked patio is costly enough (i.e., more costly to him than putting forth the effort to remove the patio), he will concede on the patio removal – even without receiving concessions on another issue in return. The result is very one-sided – the husband offers concessions, while the wife does not.

However, what if the bargaining actors are actually focused on relative gains? If relative gains are the focus of the negotiations, two different predictions arise. Which of the predictions is likely to explain a given bargaining interaction depends on whether or not the actor with the better BATNA places value on reaching an agreement. First, *if all actors involved in the bargaining process place value on reaching an agreement (even those with a better BATNA), both sides are likely to offer concessions to the other.* Consider again the husband–wife example, with both now focusing on relative gains. Perhaps the husband and wife are fighting, and “losing” to the other in any situation is simply not an option. They would rather not get what they want than “lose.” They must therefore derive equal benefits from anything that they do. In such a relative gains situation, the husband’s willingness to offer one-sided concessions on the patio without receiving anything in return decreases significantly. Even if he is in the post-sledgehammer situation, the cost of living with a hole in the patio is outweighed by the cost of letting his wife win on that issue without receiving anything in return. In this situation, if the wife really wants to remove the patio, she could agree to the kitchen renovation in return for his agreement to remove the patio. They would each benefit from the agreement and, at the same time, neither one would be winning out over the other. The result is an exchange of concessions, yielding each side an absolute gain without sustaining a relative loss.²⁵

However, the actor with the better BATNA might not value reaching an agreement. In this type of relative gains case, *if the actor facing the more beneficial BATNA does not value reaching an agreement, both sides are unlikely to offer concessions, and an agreement is unlikely to be reached.*²⁶

²⁵ If they care at all about absolute gains, this is the optimal outcome. If they care only for relative gains, they are, at the very least, indifferent as to this outcome or not reaching an agreement.

²⁶ The state with the more costly BATNA could use a rule-changing strategy to get out of this type of situation. However, that would create a new set of rules with a new set of incentives. Under *this* particular set of rules, the incentives and behavior correspond to this prediction.

Consider another case in which the wife has the upper hand. In this case, the wife does not care about the kitchen renovation, nor does she care about the patio removal. The husband is therefore left with a more costly no-agreement alternative than the wife. He really wants a more modern kitchen, and therefore to not leave things the way they are. However, the wife can live with the status quo. A trade of concessions would not be possible because the husband would gain significant benefits by having the kitchen remodeled, but the wife would not gain a benefit from removing the patio. Such a trade would yield a relative gain for the husband, and the wife would not be willing to accept that. She would therefore not concede on the kitchen issue even if offered the patio removal in return. Because the husband can expect to receive nothing in return, he has no incentive to offer concessions on the patio in the first place. The result is a lack of concession-offering from both sides, and no agreement being reached.

Note that these predictions all hold *regardless of the material capabilities of the two sides*. This is even true in the simple husband-wife example. The husband could be six feet tall and two hundred pounds of solid muscle while the wife is five feet tall and scrawny. A threat by the husband to resort to a physical fight (where he would have a clear advantage) in order to win on these comparatively minor renovation issues is simply not credible. The same would be true for states. The threat to use force against another, smaller state is not likely to be a credible threat in negotiations in which going to war over the issues at stake is clearly unreasonable. Whether or not it has greater or lesser material capabilities, a state (or wife) that has a better BATNA than their bargaining opponent will have the upper hand in these rule-structured negotiations.

However, this does not mean that material capabilities do not matter. Turning to predictions regarding states' use of rule-changing strategies, material capabilities clearly play a key role. *It is the combination of being in a position of bargaining weakness (i.e., not being able to win concessions under the current set of rules) and having the material capabilities needed to adopt a rule-changing strategy that leads an actor to do so*. Consider the husband-wife example where the wife needed to change the rules of the game to win her desired patio concessions. This was the case when her husband did not care about the kitchen renovations or the patio removal. To win concessions, the wife needed to change the rules of the game to get her husband to agree to help remove the patio. She could change the rules of the game to win those concessions, but could only do so if she had the necessary material capabilities. She could not offer

to buy a large-screen television as a side payment if she did not have the economic resources to do so. Moreover, she could not take the sledgehammer to the patio to change the husband's no-agreement outcome if she did not have the physical capability to swing it and damage the concrete. The equivalent rule-changing strategies for states include offering side payments (concessions on an outside issue in exchange for concessions in the negotiation at hand) and coercive threats – of force or of sanctions. All require material resource to be effectively used – economic and/or military capabilities.

Two factors therefore matter in the analysis of rule-changing strategies: (1) the effect that the current set of rules will have, and (2) the material capabilities of the states. It is the inability to win concessions under the bargaining rules that provides a state with an incentive to change the rules of the game. The absence of a set of rules that will lead a bargaining opponent to offer concessions therefore creates an incentive for a state to change the rules of the game. However, that state needs to have the material capabilities to be able to adopt such a strategy. These two factors, together, drive states' adoption of rule-changing strategies.

Two key implications

The argument summarized above is important for explaining variation in states' bargaining behavior, and in doing so, furthering our understanding of the outcomes that result. It also has two important implications for the analysis of international bargaining more generally. First, it has implications for our understanding of the role of *power* in international bargaining. Second, it highlights the important role of *time* in these processes. These implications are briefly discussed here, and highlighted throughout the argument and empirical analysis that follow. They are discussed in more detail in the concluding chapter.

Power in international bargaining. A first implication of the analysis is that two different types of power matter in international bargaining. One type, labeled "*material power*," corresponds to the standard definition of power in terms of states' material capabilities. The second is a rule-based, institutional source of power that states derive from having a beneficial no-agreement alternative to fall back on (i.e., a good BATNA). This second type of power is labeled "*bargaining power*." Importantly, these two types of power do not necessarily go hand in hand. In fact, it is precisely

when a state has *differing* levels of material power and bargaining power that rule-changing strategies are likely to be used.

In the rule-compliant analysis, the conditions under which a state is likely to be forced to make (rather than receive) concessions are identified. As described above, one of these key conditions is that a state has a costly alternative to agreement. This makes a state “weak” in terms of its bargaining power in the current bargaining context because it wants to avoid that costly no-agreement outcome. Its bargaining opponents can exploit that weakness to extract concessions from it, knowing it will be willing to make those concessions in order to reach an agreement. Applying this to the rule-changing part of the analysis, having a costly BATNA gives a state a strategic incentive to change the rules of the game to improve its bargaining position. However, it can only *act* on those incentives if it has the material capabilities to adopt the rule-changing strategy needed to do so.

The structural conditions that make a state “weak” in terms of its bargaining power provide the *incentive* to change the bargaining structure, while significant material resources provide the *capability* to do so. Bargaining power and material power are orthogonal in driving the use of rule-changing bargaining strategies. The role of power in international bargaining is therefore significantly more complex than it might, at first, appear. This dichotomy is highlighted throughout the book, and the key findings are summarized in the conclusion.

Bargaining over time. The two-part analysis presented here also highlights the importance of analyzing the bargaining process as it unfolds *over time*, as well as providing a framework for doing so.

As demonstrated by the real-world examples laid out above, international bargaining is not a one-shot process with a set of exogenously defined, static inputs. Instead, most bargaining processes consist of multiple “phases.” Each of these phases can be analyzed as a separate strategic interaction that is defined by its own set of bargaining rules. Within each phase, these rules can be treated as fixed, and their effect on states’ bargaining strategies can thus be analyzed. Analyzing how these phases are *connected* can then increase our understanding of the *overall* process. The analysis of rule-compliant and rule-changing strategies allows us to understand these different parts of the process.

If states *play by the rules*, the phase of the bargaining process defined by that particular set of rules ends – either with agreement or no agreement. Which of these outcomes will occur depends on the cooperative

nature of the rule-compliant strategies adopted by the states. If an agreement is reached in that bargaining phase, the overall process ends. If an agreement is not reached, that bargaining phase ends, but the overall process remains open-ended. It could be picked up immediately, or down the road, in a new phase of the process.

If a state *changes the rules* in response to the current set of rules, that phase of the bargaining process ends and a *new phase* of the process begins. This new phase is defined by the new rules created by the rule-changing state. The effects that these new rules have on states' bargaining strategies can then be analyzed in this new phase. This analysis can continue until the process ends.

The rule-compliant analysis therefore explains states' behavior within each phase of the process and the rule-changing analysis explains how the process moves from phase to phase. This framework for analyzing the overall bargaining process, and the dynamic changes that take place within that process, therefore follows the strategic framework presented by Lake and Powell.²⁷ Actions in one phase that change the current bargaining rules define the rules of the game in the next phase. However, rather than seeking to simply model the bargaining process, the goal of this book is to *empirically analyze it*. This same framework that provides game-theoretic leverage in understanding multi-phase strategic interactions can also help us to gain empirical leverage over these processes.

Where does it fit?

This book seeks to explain two dimensions of variation in states' bargaining strategies – variation in their rule-compliant bargaining behavior and variation in their rule-changing bargaining behavior. By setting up an empirical analysis designed to distinguish between these two types of strategies, the approach presented here establishes a middle ground between two important bodies of literature – the more “structural” predictions of game-theoretic bargaining models, on the one hand, and the more tactical understandings of the negotiation analysis literature, on the other. At the same time, the multi-part analysis straddles a wide array of institutional literature. By analyzing the effects of contextual rules, as independent variables, on states' bargaining strategies, this book speaks

²⁷ Lake and Powell 1999.

to the literature on institutional effects. By analyzing those rules as dependent variables that can be affected by strategic choices made by states, it also touches on issues of institutional design and institutional change.

Game-theoretic literature

The game-theoretic literature makes several contributions to our understanding of bargaining strategies – both rule-compliant and rule-changing. Going back decades, John Nash made an important insight in the study of non-cooperative game theory – an insight that provides the foundation for the analysis of what this book refers to as “rule-compliant” strategies. He showed that a player’s equilibrium strategy is a best response to the strategy adopted by the other player(s), *given the “structure” of the game being played*²⁸ – that is, the “rules of the game.” Recognizing the important role that the rules of the game have in structuring the strategies actors adopt, most game-theoretic approaches to the study of international bargaining analyze how the variation in one (or more) of these rules affects actors’ equilibrium strategies and/or the outcome of their bargaining interaction.²⁹ As these studies show, there is a wide variety of factors that characterize any given bargaining structure, and they each exert important effects on states’ strategic bargaining behavior.³⁰

Several of these game-theoretic studies even specifically focus on explaining the *cooperative* nature of states’ rule-compliant strategies as “cooperative” is defined here. They do so by analyzing how some particular rule affects the size of the “offer” (or concession) that one side makes to the other.³¹ Together, these studies highlight multiple factors that can affect states’ concession-offering strategies when those states “play by the rules” of a bargaining game.

This book builds on this tradition by analyzing how three contextual rules, in particular, structure the bargaining game in ways that affect the

²⁸ Nash 1950b; 1951.

²⁹ For a review of this literature, see Muthoo (1999). For specific reviews of the crisis bargaining literature, which has become a particular focus in the study of international bargaining, see Powell (2002) and Reiter (2003).

³⁰ These factors include states’ discount factors (e.g., Rubinstein 1982; Blaydes 2004), domestic ratification constraints (Putnam 1988; Iida 1993; Tarar 2001), the beneficial (or costly) nature of a state’s alternative to agreement (Nash 1953; Gruber 2000; Voeten 2001), and more.

³¹ e.g., Nash 1953; Rubinstein 1982; Putnam 1988; Iida 1993; Gruber 2000; Tarar 2001; Voeten 2001; Blaydes 2004.

concession-offering strategies states adopt (i.e., the “cooperative nature” of their strategies). These three rules are (1) the set of issues on the bargaining agenda, (2) the outcome that will occur if no agreement is reached, and (3) whether states focus on absolute or relative gains. Each of these factors has been analyzed by at least some game-theoretic work, though these studies often do not specifically focus on an analysis of strategies, and/or do not analyze them in an international bargaining context.³² These studies also focus most of their attention on the game-theoretic aspects of the analysis, while giving much less attention to the empirical side. The analysis here builds on this work in order to develop empirical predictions regarding when and why states will adopt different strategies when bargaining under different sets of rules.

The second stage of the analysis goes even further by connecting these three rules of the game to the incentives states have to change them. This second, “rule-changing” part of the analysis also builds on insights from the game-theoretic literature – in particular, the literature on institutional change (with “institutions” defined as the rules of the game). While the majority of game-theoretic work analyzes institutions as self-enforcing equilibria, thus focusing on institutional stability rather than institutional change,³³ several works have begun to move in this direction. These studies focus on endogenous institutional change by analyzing when, why, and how actors choose particular rules of the game in various decision-making settings.³⁴ These works, which try to be generalizable, are also admittedly (and purposely) less theoretically rigorous than most other formal work, because “changing the rules of the game is an essential form of political innovation and innovation defies theories and rules.”³⁵ Riker even refers to endogenous institutional change as the “art” of political manipulation.³⁶ Indeed, it is not possible to define, *ex ante*, the full set of strategies that actors might potentially adopt, and all of the ways that

³² For example, Snidal (1991) analyzes the effect of a focus on absolute versus relative gains, but does not analyze these effects in an international bargaining context. Tollison and Willett (1979) and Sebenius (1983) analyze the effect of the issue linkage structure, but do not directly apply these analyses to states’ strategies. Gruber (2000) analyzes the effect of changing the no-agreement outcome for an opponent state, but does not seek to explain the conditions under which a state will choose to do so.

³³ For critiques of the static approach, see Hall and Taylor (1996) and Greif and Laitin (2004).

³⁴ For examples of early works that do this, see Riker (1986) and Tsebelis (1990).

³⁵ Tsebelis 1990: 95–6.

³⁶ Riker 1986.

every bargaining rule could possibly be changed when setting up a game to analyze.

Some works circumvent this problem by focusing on a very abstract level of analysis, where such specific strategies do not need to be defined.³⁷ More commonly, others address this problem by analyzing one specific bargaining rule, and how it can be changed in one particular way. For example, several works do this by analyzing the no-agreement outcome as something states can strategically alter – either by using “threats” in general,³⁸ by using the threat to use force,³⁹ or by using the threat to “go it alone.”⁴⁰ Each highlights an important strategic choice states make when changing the rules of the game.

Important advances in our understanding of both rule-compliant and rule-changing bargaining strategies have clearly been made by the game-theoretic literature. However, work remains to be done to more fully understand these processes. This is especially the case on the empirical level, where patterns and regularities in actual state bargaining interactions need to be identified and analyzed. Drawing on both rule-compliant and rule-changing studies, this book analyzes three rules of the game – focusing on the effects they have on the strategies states choose to adopt, as well as how they can be changed by states. While it does not present a game-theoretic analysis, this book builds on insights from this literature, using them to increase our understanding of the *empirical* variation that exists in state bargaining strategies.

Negotiation analysis literature

Game-theoretic works define a bargaining strategy as each player's best response to the rules of the bargaining game and the strategies adopted by the other players. However, even the game-theoretic literature has

³⁷ e.g., Greif and Laitin 2004.

³⁸ Nash (1950a) does this by analyzing the “no agreement” outcome of the bargaining game as a function of threats made by the bargaining players in the first round of their interaction.

³⁹ In his review of the conflict literature, Powell (2002) specifically highlights the fact that the threat of force in conflict bargaining removes the status quo as the alternative to agreement, replacing it with an outcome in which the states enter into a military conflict.

⁴⁰ Gruber (2000) and Voeten (2001) also analyze how states can change the no-agreement outcome (i.e., alter the status quo) by showing that the threat by a subset of states (or a single state) to “go it alone” removes the status quo from the set of available alternatives to agreement.

come to recognize that bargaining strategies are more than that. “Art” and “innovation” are possible, and the strategies that can be adopted vary widely – often in ways that are hard to explicitly define in a game-theoretic model.⁴¹ Schelling specifically made this point, arguing that pure game-theoretic models cannot capture the nuance of states’ bargaining strategies. Instead, strategies are “a set of tactical choices” states make, with a broad array of different options they can choose.⁴²

Building on this idea, the negotiation analysis literature⁴³ studies the variations that exist in the tactical nature of bargaining strategies. The main type of variation highlighted by this literature is captured by a typology that distinguishes between “integrative bargaining” – a process through which states work to find common or complementary interests and solve common problems – and “distributive bargaining” – a process through which states work to resolve pure conflicts of interest. These categories are very broad, and can include many different types of tactical choices. This typology, and other typologies of bargaining strategies developed in the negotiation analysis literature,⁴⁴ have helped to make important advances in our understanding of real-world international negotiations. These studies use the typologies they present as an analytic tool, applying them to various international negotiations, and thus helping us to understand the wide array of strategies states choose in very complex bargaining processes.⁴⁵

The negotiation-analysis literature also provides some insights into explaining how and why particular bargaining rules come about. These studies focus on the importance of the tactical choices states can make

⁴¹ Again, see [Riker \(1986\)](#) and [Tsebelis \(1990\)](#) for examples of works highlighting the difficulty of defining the full set of possible strategies at the outset of the game when rule-changing moves are possible.

⁴² [Schelling 1960](#).

⁴³ For surveys of this literature, see [Sebenius 1992](#); [Odell 2010](#).

⁴⁴ More recently, scholars have also begun to draw other distinctions between state bargaining strategies – typologies often developed because of problems the authors find with the “distributive” v. “integrative” typology. [Hopmann \(1995\)](#) and [Elgström and Jönsson \(2000\)](#) distinguish between “bargaining” and “problem-solving”; [Risse \(2000\)](#) and [Ulbert and Risse \(2005\)](#) distinguish between “bargaining” and “arguing”; and [Dür and Mateo \(2010a; 2010b\)](#) distinguish between hard bargaining and soft bargaining.

⁴⁵ For examples, see [Zartman’s \(1987\)](#) analysis of North–South negotiations, [Odell’s \(2000\)](#) analysis of international economic negotiations, [Narlikar and Odell’s \(2006\)](#) analysis of coalition formation by developing countries in the WTO negotiations, and [Conceição-Heldt’s \(2006\)](#) analysis of bargaining in the EU.

during the “prenegotiation” process, defining the “set-up” of the negotiation.⁴⁶ The final stage of the prenegotiation process is precisely dedicated to establishing what, where, how, with whom, and in what sequence to negotiate⁴⁷ – that is, it defines the “rules of the game.” While helping us to understand how bargaining rules come to be defined, these analyses are often prescriptive in nature, providing advice on how negotiators should best set up the negotiation in order to achieve their interests.⁴⁸ The empirical question of what rules will be chosen, and under what conditions, is left under-theorized and untested. The analysis of rule-changing strategies that is presented here is designed to address this question.

Taken together, the negotiation-analysis works are important because they focus attention on empirical variation in state bargaining strategies, and lay out detailed conceptualizations of the bargaining processes on which they focus. This book builds on these strengths, while bringing in three additional elements. First, it incorporates the distinction between rule-compliant and rule-changing strategies into the conceptualization of variation in state bargaining strategies. Second, it recognizes that while some strategies might “best” fulfill the interests of states, the rules of the game can constrain negotiators’ ability to use these strategies. States therefore cannot simply choose any type of strategy they might want to adopt. Finally, building on the insights offered by the qualitative analyses presented in this literature, this book conducts empirical analyses that use *both* qualitative *and* statistical methods to explain when and why states are likely to adopt different types of bargaining strategy.

Institutions literature

By building on the ideas presented in the game-theoretic and negotiation-analysis literature, and carrying out the empirical analysis described above, this book also speaks to the more empirically oriented literature on institutions. Institutions are often broadly defined in the IR literature, as “rules” that govern state interactions. More formally, *institutions* can be understood as “persistent and connected sets of rules (formal

⁴⁶ This prenegotiation process begins when one or more parties consider negotiation as a potential policy option. The process, itself, then defines and shapes the negotiation that follows (Stein 1989). Lax and Sebenius (2006) also analyze the negotiation “set-up,” providing prescriptive advice to negotiators on how best to set up the negotiation in order to achieve their interests.

⁴⁷ Tomlin 1989.

⁴⁸ e.g., Lax and Sebenius 2006.

or informal) that prescribe behavioral roles, constrain activity, and shape expectations.”⁴⁹ The contextual rules that are the focus of this book can thus be understood under this “institutions as rules” definition frequently employed in the IR literature. The analysis of the effects of these rules on states’ bargaining strategies therefore relates to the literature examining institutional effects, while the analysis of when, why, and how states change these rules (rather than play by them) relates to the literature on institutional design and institutional change.

Institutional effects. The first stage of the analysis presented here examines how the rules of the game impact states’ choice of rule-compliant strategies. It is therefore closely connected to the literature examining institutional effects. This literature shows how institutions (i.e., the rules of the game) act as independent variables to exert important effects on state behavior.

In some cases, institutions are shown to play an *intervening* role in translating states’ material power and interests into some particular outcome variable, such as cooperation or the reaching of a cooperative bargaining agreement.⁵⁰ Institutions can provide information, reduce transaction costs, help to monitor state compliance with treaties, provide focal points, and lengthen the shadow of the future.⁵¹ All of these effects can help states to achieve cooperative outcomes that reflect their interests better than the non-cooperative alternative.⁵² It might be the powerful states whose interests are best reflected in those outcomes.⁵³ However, institutional mechanisms still play a role by helping those powerful states, as well as other states, to achieve cooperative outcomes they might not otherwise have been able to achieve.

⁴⁹ See Keohane (1988: 343; 1989: 3) for this definition. There are many different definitions of institutions in the IR literature. This particular definition stems from the rationalist institutionalist literature, and parallels definitions of institutions from the game-theoretic literature, which focus on institutions as the “rules of a recurring political or social game” (Tsebelis 1990: 94), or simply the “rules of the game” (North 1990). This definition is therefore consistent with the rationalist approach I adopt in this book. However, other definitions of institutions include narrow definitions focused on international organizations (e.g., Stein 1990: 27 fn.3; Haas, Keohane and Levy 1993: 397; Martin 1993: 423), as well as broad definitions that encompass norms, both prescriptive and constitutive (see Barnett 1996:159; Finnemore and Sikkink 1998: 891; Ruggie 1998). For a review of these different conceptualizations, see Duffield (2007).

⁵⁰ Krasner 1983.

⁵¹ Axelrod 1984; Keohane 1984; Axelrod and Keohane 1985; Garrett and Weingast 1993.

⁵² For an example of this, see the prisoner’s dilemma analysis.

⁵³ Krasner 1991.

In other cases, institutions are shown to exert effects *independent of* states' material power and interests.⁵⁴ Consensus voting rules can potentially mitigate states' material power by providing a veto to each state, regardless of its size.⁵⁵ The linkage of issues that are "differently valued" by states with opposing interests can open up a zone of agreement by creating the possibility for a mutual trade of concessions that did not exist on each issue, individually.⁵⁶ The set of available alternatives to agreement affects the bargaining power of states, potentially mitigating the effects of their material capabilities.⁵⁷ These effects are important, and understanding how institutions and rules shape states' rule-compliant bargaining behavior is clearly an important first step in the study of international bargaining.

However, states can often change the rules of the game – even in domestic decision-making processes.⁵⁸ This is particularly true for the rules examined in this book. States can link new issues to a negotiation by offering side payments, or by holding outside issues hostage in order to extract concessions in the negotiation at hand.⁵⁹ They can remove the status quo from the set of available alternatives to agreement by threatening to use force or to impose sanctions if a favorable agreement is not reached. They can also threaten to go it alone if a multilateral cooperative agreement cannot be reached, again removing the status quo from the alternatives to agreement that are available to their bargaining opponents. Analyses of institutional effects that treat the rules of the game as exogenous to states' bargaining interaction cannot get at these dynamic choices and the resulting institutional changes.

⁵⁴ This argument builds on more formal arguments about institutional effects, which began in the American politics literature (e.g., Shepsle 1979; 1986; Shepsle and Weingast 1984; 1987; Krehbiel, Shepsle, and Weingast 1987), and has been applied in specific cases to the effects of international institutions such as the EU (e.g., Garrett 1992; Tsebelis 1994).

⁵⁵ e.g., McKibben 2013.

⁵⁶ Tollison and Willett 1979; Sebenius 1983.

⁵⁷ For example, see Slapin (2011), who demonstrates that the current state of status quo policies provide leverage to states seeking to avoid the creation of more cooperative/integrationist policies in the EU. This effect, Slapin shows, occurs regardless of the material capabilities of the states on each side. More status quo-oriented states are able to have their interests better reflected in the EU Treaties than their more integrationist bargaining opponents, regardless of their material capabilities.

⁵⁸ McKelvey and Ordeshook 1984; Riker 1986; Moe 1990; Majone 1989; Jupille 2004.

⁵⁹ For a description of this type of tactic, see Sebenius 1983.

Institutional design and change. The second stage of the analysis presented here examines when, why, and how states change the rules of the game. This analysis is therefore closely connected to the literature examining institutional design and institutional change. The (rationalist) institutional design literature takes a step toward tackling the problem of understanding the rules of the game as a dependent variable we need to explain. According to its functional logic, states purposefully design institutions to solve common problems, and choose rules that will best serve their future needs.⁶⁰ Moreover, different institutions solve different problems. We can therefore understand why particular institutions exist in particular settings by understanding variation in the problems they were meant to solve.⁶¹ This general logic has been explicitly applied to explain the formation of a wide variety of specific institutions, such as the EU⁶² and the World Trade Organization.⁶³

However, several critiques of this functionalist approach to institutional design exist.⁶⁴ For purposes of the analysis presented here, two of these critiques are particularly relevant. First, these studies tend to overlook the important role of power and interests in the design of international institutions. Not all institutions and rules are preferred by all states to the current status quo.⁶⁵ Instead, some states can dictate how institutions come to be designed in multilateral negotiations by explicitly or implicitly threatening to go ahead without states that do not support its preferred outcome,⁶⁶ or by threatening to veto institutional designs that do not reflect their interests.⁶⁷ Other states might prefer to remain at the status quo, or to have cooperation under different terms, more than they want the powerful state's institutional design choice. However, they are likely to follow the wishes of the powerful state in order to avoid being completely left out of the process and the resulting cooperative regime.

⁶⁰ Keohane 1982; 1984.

⁶¹ For example, institutions can reduce transaction costs (North and Robert 1973; Williamson 1975), can assist in the coordination and management of certain types of issue (Tir and Douglas 2011), and can respond to market failures, thus permitting states to capture gains that are otherwise unavailable from cooperation (Keohane 1984). Moreover, institutions can be designed with more or less flexibility, allowing states to deal with uncertainty (Tsebelis 1990; Rosendorff and Helen 2001; Koremenos 2005).

⁶² e.g., Moravcsik 1993 and 1998; König and Bräuninger 2000; Bräuninger et al. 2001.

⁶³ e.g., Rosendorff and Helen 2001; Koremenos 2005; Rosendorff 2005.

⁶⁴ For more on these critiques, see Bates 1988; Duffield 2003; Jupille 2004; Pierson 2004.

⁶⁵ See Gruber 2000; Voeten 2001; Rector 2009; Thompson 2010. Gruber (2005) even explicitly discusses the "power politics" that underpins institutional design.

⁶⁶ Gruber 2000; Voeten 2001.

⁶⁷ Rector 2009.

Power, and the fact that states can have conflicting interests regarding the design of an institution, must therefore be taken into account. This book addresses this issue by analyzing the incentives states have to change the rules of the game, as well as the effects of bargaining power and material power on the way that they do so.

Second, concentrating on institutional design alone overlooks the important role that institutions, as independent variables, can play in constraining and shaping the design of future institutions. This is particularly important for this analysis because states' bargaining behavior is shaped by the rules of the game *at the same time* that states must choose whether or not to change those rules, and how to do so. The question regarding the adoption of rule-changing strategies is therefore endogenous to the rules and context of the current interaction taking place. The rules of the game must be treated as independent variables that affect states' choice regarding the pursuit of rule-changing bargaining strategies, which at the same time can affect the rules of the game as dependent variables.

The institutional change literature provides some important empirical advances in dealing with this question. Specifically, this literature recognizes that institutions serve as direct constraints on state behavior, but can also affect state behavior indirectly by creating opportunities, limitations, and incentives that affect the possibilities for institutional change.⁶⁸

Works in the comparative politics tradition, in particular, have begun to focus on this endogenous institutional change.⁶⁹ Most of these works focus on formal rules and decision-making procedures, examining the endogenous change of these formal institutions over time. For example, Jupille analyzed how constitutional and procedural rules simultaneously constrain the behavior of decision-makers and reinforce themselves, while at the same time political actors can seize on specific opportunities to change those rules.⁷⁰

The works focusing on domestic politics and formal institutions, however, downplay the prevalence of rule-changing strategies in international bargaining. International institutions are significantly more fragile than are domestic institutions, as they exist in the anarchic international system, and are thus easily manipulated by states. Making it even easier to change the rules of the game, many rules governing states' bargaining interactions are contextual (rather than procedural), and not formalized

⁶⁸ e.g., North 1981; Krasner 1984; Levi 1988; Shepsle 1989; David 1994; Thelen 1999; Pierson 2000; Mahoney and Thelen 2010.

⁶⁹ e.g., Jupille 2004; Mahoney and Thelen 2010.

⁷⁰ Jupille 2004.

in any way. Indeed, this is the case for the three rules examined in this book. Institutional change is therefore likely to be frequent, and can even be carried out unilaterally, if the conditions are right.

An argument focused on the study of *international* bargaining therefore needs to bring in the insights from comparative politics regarding the study of institutional change, while addressing the unique situation in which states interact, in order to take into account the possibilities for institutional change in international bargaining. The two-part analysis presented in this book is designed to do just this.

The argument: building on this literature

This book builds on the strengths of these various bodies of literature to tackle the empirical questions of when and why states adopt different types of bargaining strategies. Going beyond a simple analysis of a state's offers of concessions (or lack thereof), it also works to capture the tactical, rule-changing aspects of state bargaining behavior. In doing so, this book identifies *ex ante* conditions under which we are likely to observe a state adopting a rule-compliant versus a rule-changing bargaining strategy, as well as the cooperative nature of that particular strategy. In doing so, it builds on contributions from the negotiation analysis literature to develop a detailed conceptualization of variation in states' bargaining strategies, while at the same time addressing problems with existing typologies. It also builds on the strengths of the institutionalist literature by treating the rules of the game as both independent variables that affect states' bargaining strategies *as well as* dependent variables that can be manipulated by states. Throughout the theoretical and empirical analyses, the interaction between these two types of strategy is highlighted. The analysis presented here also pays particular attention to the role of power and interests – key factors to take into account in any study of state interactions.

The result is an analysis which explains (1) the effects that the rules of the game have on states' rule-compliant bargaining strategies, (2) the incentives these effects create for states to change the rules of the game, and (3) the conditions under which states are likely to be able to act on those incentives, actually engaging in the process of institutional rule-change.

Overview of this book

Chapter 2 presents a typology of variation in state bargaining strategies which draws a clear distinction between rule-compliant strategies and rule-changing strategies, and the cooperative and confrontational

versions of each. Capturing these two dimensions of variation, this typology lays out the overarching dependent variable that this book seeks to explain.

Chapters 3 and 4 then present an argument to explain this variation in bargaining strategies – both across different negotiations as well as across time within a single bargaining process. Chapter 3 lays out the first stage of the analysis, focusing on variation in the cooperative/confrontational nature of states' rule-compliant strategies. It highlights the conditions likely to lead states to make and/or receive concessions when playing by a given set of bargaining rules. Chapter 4 builds on the analysis in Chapter 3 to address two additional questions. First, taking into account the effects of the rules highlighted in Chapter 3, it analyzes states' strategic decisions regarding whether to play by the rules of a given bargaining interaction or whether to change those rules. Second, Chapter 4 analyzes the cooperative/confrontational nature of the rule-changing strategy a state is likely to adopt when it chooses to use this type of strategy. Together, these two analyses provide building blocks to help us understand the dynamics of international bargaining processes.

The remainder of the book lays out a research design and empirical analysis to test these arguments. The analysis consists of four chapters, with two chapters dedicated to analyzing each part of the argument. Individually, each chapter lays out a separate empirical test while controlling for potential mitigating factors in the specific negotiations it analyzes. This is done to demonstrate the internal validity of the theoretical argument. The chapters are paired in order to demonstrate the external validity of the argument by showing the predicted effects at work in cases that are substantively quite different. Overall, the analysis shows that the argument presented here explains states' choice of bargaining strategies across different bargaining settings and different issue areas.

Chapters 5 and 6 analyze the hypotheses regarding how the rules of the game affect states' rule-compliant bargaining behavior. To do so, they focus on institutional settings that constrain states' ability to use rule-changing strategies, thus limiting them to the adoption of rule-compliant ones. Chapter 5 uses a statistical analysis and illustrative case studies to analyze bargaining among the member states of the EU across a wide variety of issue areas. Chapter 6 again uses both quantitative and qualitative methods, analyzing variation in the bargaining behavior states adopted in international trade negotiations that took place under the General Agreement on Tariffs and Trade (GATT). Each of the two

chapters analyzes multiple bargaining interactions in these two different settings.

Chapters 7 and 8 then analyze the hypotheses predicting when and why a state is likely to adopt a rule-changing (instead of a rule-compliant) bargaining strategy. In both of the cases analyzed in these chapters, rule-changing strategies were available to the bargaining states, but were not always used. Chapter 7 employs both a statistical analysis and an illustrative case study to analyze when and why rule-changing, issue linkage strategies were used in recent multilateral climate change negotiations. Chapter 8 then uses a qualitative, “most-similar” case study design to analyze when and why states adopted rule-changing strategies in the negotiations of the Kosovo status process. It also highlights the cooperative/confrontational nature of both the rule-compliant and rule-changing strategies adopted throughout the process.

After laying out this multi-faceted theoretical argument and analyzing it across a wide range of empirical settings, Chapter 9 concludes by highlighting the implications that this argument has for our understanding of state bargaining strategies and international bargaining, more generally.

Rule-compliant/rule-changing framework

Typology of bargaining strategies

This chapter lays out a typology of state bargaining strategies, drawing a clear distinction between strategies that comply with the rules of the game (*rule-compliant strategies*) and strategies designed to change those rules (*rule-changing strategies*). This typology also distinguishes between *cooperative strategies* – characterized by the offering of concessions – and *confrontational strategies* – characterized by a refusal to make concessions and attempts to extract concessions from other states.

This typology, which captures variation along these two dimensions, is the overarching dependent variable that this book seeks to explain. This chapter discusses each of the various types of bargaining strategy states can adopt, and provides illustrative examples of each.

Rule-compliant strategies

Within the set of rule-compliant bargaining strategies, there exists significant variation in the cooperative/confrontational nature of the strategies states can adopt. Cooperative strategies are characterized by the offering of concessions, while confrontational strategies are characterized by a refusal to offer concessions and attempts to extract concessions from other states. These two ideal types represent opposite ends of an underlying continuum of concession-offering along which any given bargaining strategy can fall. This continuum can be broken down into four categories of empirically observable bargaining behavior. The cooperative/confrontational nature of these four different types of rule-compliant strategies is summarized in Table 2.1.

Highly confrontational strategies

When adopting the most extreme type of confrontational rule-compliant bargaining behavior, a state's strategy focuses on extracting concessions

Table 2.1. *Summary of variation in rule-compliant strategies*

Cooperative nature of strategy	Character of strategy vis-à-vis concessions	Empirically observable behavior
Highly confrontational	Concession-extracting	Veto (or veto threat); formation of blocking coalition; and/or delay tactics
Somewhat confrontational	Concessions demanded	No meaningful concessions offered; demands for concessions made; or concessions promised, but not made
Somewhat cooperative	Mid-range, conditional concessions offered	Concessions offered (often conditionally); concessions reflect no willingness to agree to an opposing states' position on any issue
Highly cooperative	Opposition-accepting concessions offered	Concessions offered unconditionally; and/or concessions reflect willingness to accept opposing state's position on at least one key issue

from other states in order to achieve an agreement as close as possible to its own ideal point. Tactics that a state might use to extract concessions in this way include threatening to veto the agreement or threatening to walk away from the bargaining table until concessions are received. If a single state cannot veto or delay agreement on its own, efforts to form "blocking coalitions" to back up these types of threat characterize this same type of confrontational bargaining behavior. In the most extreme form of confrontational bargaining, these threats are even carried out – states (or blocking coalitions) *do* veto agreements and they *do* walk away from the bargaining table.

In each of these cases, the rules of the game are not changed, but the veto, delay of agreement, or veto threat imposes the *current* no-agreement outcome on the other states. This no-agreement outcome is often very close to the ideal outcome of the state adopting the confrontational strategy, especially in the most extreme cases in which a veto threat is used. When the no-agreement outcome reflects the vetoing

state's interests, this means that adopting such a confrontational strategy allows that state to impose its own ideal outcome on the other negotiating states, forcing them to concede and accept that result.

Examples of highly confrontational strategies. The exercise of veto power by states on the United Nations Security Council provides the most important, and widely recognized, example of the adoption of confrontational, rule-compliant bargaining strategies in international negotiations. From 2005 to early 2011, official vetoes were recorded on six occasions. In 2006, the United States vetoed two resolutions designed to condemn Israeli military operations in Gaza – one in July demanding a halt to Israel's military offensive in the Gaza Strip and one in November calling for an immediate withdrawal of Israeli forces from the Gaza Strip and a cessation of violence by both Israel and Palestine. In 2007, China and Russia vetoed a resolution calling on Myanmar's government to cease military attacks against civilians in ethnic minority regions. In 2008, China and Russia vetoed a resolution placing sanctions on Zimbabwe's president and an arms embargo and travel ban on the country. In 2009, Russia vetoed a resolution that would have extended the UN peacekeeping mission in Georgia. Finally, in 2011, the United States vetoed a resolution demanding that Israel cease settlement activities in the occupied Palestinian territories.

In all six cases, the veto forced the other states in the international system to accept the no-agreement outcome, which reflected the interests of the vetoing state or its allies. The three US vetoes protected the interests of Israel and its status quo situation in Gaza and the occupied Palestinian territories. In addition, it prevented the creation of new declarations or condemnations of Israel's actions. The Chinese and Russian vetoes in 2007 and 2008 preserved the status quo situation for Myanmar and Zimbabwe, and protected China and Russia's own interests in avoiding the creation of a precedent for condemning governments for their maltreatment of minorities. Finally, the Russian veto in 2009 forced the UN peacekeeping mission in the Abkhazia region of Georgia to withdraw – the outcome that had to occur if no extension of the mandate was agreed. This Russian veto therefore protected its own interests in the region, which was largely under Russian control following the conflict between Russia and Georgia in 2008.

These examples show the importance of confrontational bargaining tactics and the way that they can be used to extract concessions from other negotiating states. These vetoes did not change the no-agreement

outcome, but they imposed the current no-agreement outcome on their bargaining opponents. These vetoes therefore illustrate states' adoption of highly confrontational rule-compliant strategies.

Somewhat confrontational strategies

Slightly less extreme than these concession-extracting strategies, but still confrontational in nature, are strategies in which states do not offer concessions to other states, but also do not overtly try to extract concessions from them. Instead, they either make demands for concessions which are not backed up by tactics explicitly designed to extract those demanded concessions or they make promises to offer concessions which are never carried out.

Examples of somewhat confrontational strategies. The bargaining behavior adopted by both developed and developing countries in the early years of the Doha Round of WTO trade negotiations (2001 to around 2005) reflects this type of somewhat confrontational strategy. Both sides either made demands for concessions or promises of concessions that were not carried out. These demands and promises largely revolved around the issue of agricultural trade liberalization. Developing countries demanded that the United States and the EU reduce their agricultural subsidies, arguing that these subsidies impeded their ability to compete in the US and EU markets. However, the developing countries did not threaten to veto the agreement if they did not receive such concessions. Reaching an agreement that further liberalized trade in agriculture, manufacturing, textiles, and other issues being discussed in the Doha Round was still extremely important to their interests. Their bargaining strategies were therefore characterized by demands for concessions without accompanying veto threats. On the other side, the United States and the EU “promised” to make cuts to their agricultural subsidies, but took little action toward doing so.¹ The US and EU strategies were therefore characterized by promises of concessions without any actions designed to actually carry out those promises. Both sides in the early years of the Doha Round negotiations therefore adopted “somewhat confrontational,” rule-compliant strategies.

¹ For some evidence of this, see [Becker 2003, 2004](#); [Meller 2004](#); [Wright 2005](#); [Dougherty 2007](#).

Highly cooperative strategies

The most cooperative rule-compliant strategy is characterized by the offering of concessions that are large enough that a state is willing to accept the ideal outcome of the state (or states) with an opposing position on at least one of the main issues on the bargaining agenda. These offers could be made conditionally or unconditionally. Unconditional concession offers are clearly “highly cooperative” in nature. If the concessions a state offers are made without any expectation that concessions will come in return, the offer necessarily has to be large enough that the receiving state would agree without having to make any concessions itself. Otherwise, the offer would not be unconditional. However, these offers could be made conditional on the receipt of concessions in return and still fall in this highly cooperative category. As long as a state offers a large concession – conceding and accepting an opposing state’s preferred outcome on at least one issue – its strategy is considered to be highly cooperative in nature.

Examples of highly cooperative strategies. The bargaining strategies adopted by both the United States and Russia as part of an exchange of concessions in 2009 illustrate highly cooperative strategies. On one side, the United States agreed in 2009 (under the administration of President Barack Obama) to cancel its plan to deploy a sophisticated radar system and ground-based interceptors to eastern Europe. The deployment of this missile defense system was strongly opposed by Russia when it was first planned by the United States under the Bush administration in the mid-2000s. This change in US policy amounted to one of the “biggest national security reversals” by the administration,² and a significant concession to Russia. In return, Russia responded by deviating from its own long-term policies by agreeing to an indefinite freeze on its sale of anti-aircraft missiles to Iran. By agreeing to this, Russia finally allowed a fourth round of multilateral sanctions against Iran to go through in the UN Security Council³ – sanctions that the United States had been trying to get for several years in order to pressure Iran to stop development of its nuclear program. These offers of concessions were clearly made conditional on the receipt of concessions in return. However, both states’ strategies reflected behavior consistent with the preferences of the other, and a deviation from their own long-term policies. The strategies

² Baker 2009.

³ This was UNSC Resolution 1929.

captured by this exchange of concessions therefore represent “highly cooperative” bargaining strategies.

This type of highly cooperative bargaining strategy might even be adopted if significant concessions are not received in return. In 1986, the developing countries offered significant concessions to the United States in the negotiations that set the agenda for the Uruguay Round of trade negotiations. They conceded that issues such as financial services, investment, and intellectual property rights would be included on the bargaining agenda, even though they felt that the inclusion of these issues might cause them to have to surrender their sovereignty in economic policy.⁴ These concessions were not part of a concession exchange, as very few of the issues that the developing countries wanted to have included on the Uruguay Round’s bargaining agenda were accepted by the developed countries in return. Indeed, the developing countries made this concession because the United States threatened to use (and in some cases did use) economic sanctions against them if they did not concede and agree to this agenda.⁵

These two examples help to highlight an important point regarding when a state’s bargaining strategy is considered to be cooperative in nature. What matters is whether or not a concession is made, and the size of that concession. A large concession represents a significant “adjustment” by a state from its preferred policy outcome⁶ – regardless of whether it was offered as part of an exchange of concessions or because it was “extracted” by more powerful states, and regardless of whether it was made conditionally or unconditionally. What this book seeks to explain is what a state *actually did* in a given bargaining interaction. A state’s strategy is therefore coded as being “highly cooperative” in nature if it conceded its bargaining position and accepted an opposing state’s most preferred outcome on at least one of the key issues in the negotiation, regardless of its underlying motivation for doing so.

Somewhat cooperative strategies

A second type of bargaining strategy is also characterized by the offering of concessions, though it is less cooperative in nature. This bargaining

⁴ Watkins 1992.

⁵ Ibid.

⁶ In the standard definition of the term, international cooperation is defined as “mutual adjustment” (Keohane 1984). Adjustment by one state from its preferred policy (via a concession, in the case of bargaining interactions) is therefore a “cooperative” move by that state.

strategy is still characterized by an offer of concessions, but these concessions are smaller than those described above, demonstrating an unwillingness to accept the ideal point of opposing states on any of the issues on the agenda. These offers are always (at least implicitly) conditional in nature, because the concessions a state makes when adopting this type of bargaining strategy do not reflect a willingness to accept its opponent's bargaining position on any of the issues. Its opponent therefore has to make some concessions in return if an agreement is to be reached.

This "somewhat cooperative" strategy is likely to be more common in international bargaining than the highly cooperative one discussed above. This is a strategy in which some concessions are made, but those concessions do not reflect a willingness to give an opposing state everything that it wants on an issue. Instead, it reflects a willingness to "give a little." If all states in a negotiation adopt this type of strategy, the result would likely be a bargaining agreement in which states "met somewhere in the middle" of their ideal points.

Example of somewhat cooperative concessions. In 2010, the United States made a "pledge" to support Russia's efforts to complete the remaining steps it needed to join the WTO. This pledge provides an illustrative example of this type of somewhat cooperative concession offer.⁷ It represents a less cooperative strategy than those described in the previous section because the offer that was made represented "qualified" support for Russia's membership, rather than the unqualified support Russia would have preferred. The offer was made conditional on a requirement that Russia first adopt regulations regarding the protection of intellectual property rights and the patents of pharmaceuticals – an issue that was central to US interests and a part of the WTO agreements negotiated in the Uruguay Round.⁸ The concession offer therefore moved toward Russia's most preferred outcome – unqualified support for Russia's ability to join the WTO – but at the same time protected key US interests regarding requirements that had to be met to secure membership in the institution.

Together, these four categories capture the wide variation that exists in the type of bargaining strategies that states can adopt when they play by the rules of a given negotiation.

⁷ For more on this pledge, see [White House 2010](#).

⁸ [Kramer 2010](#).

Rule-changing bargaining strategies

The second category of bargaining strategies includes strategies designed to change the rules of the game. Two features of the bargaining rules are most often the target of states' rule-changing strategies: (1) the set of outcomes available if no agreement is reached, which defines each state's BATNA, and (2) the set of issues being negotiated.⁹ These factors are important for several reasons. First, they are both features of the negotiation that it is actually possible for states to change. In addition, these two factors combine to define the range of possible outcomes of a given bargaining interaction. States' alternatives to agreement define the outcome that will result if no bargaining agreement is reached,¹⁰ and the set of issues being negotiated defines the policy space within which the range of possible negotiated agreements falls. The strategies states can use to change these two key rules of the game, and the cooperative nature of each strategy they might employ when doing so, are summarized in Table 2.2.

Table 2.2. *Summary of variation in rule-changing strategies*

Cooperative nature of strategy	Feature of the negotiation that is altered	Empirically observable behavior
Confrontational	Opposing states' BATNA	Threat (or use) of force Threat (or use) of sanctions Threat to go-it-alone
Confrontational	Set of issues being negotiated	Holding one issue hostage to extract concessions on another, linked, issue
Cooperative	Set of issues being negotiated	Offering of side payment

⁹ It is clearly possible for states to change other features of a negotiation. For example, states can alter the transparency of the negotiation by leaking information, or can alter the number of actors involved by including or excluding different parties from the negotiation. The focus in this book on states' BATNAs and the set of issues on the agenda is not exhaustive. Instead, it is designed to focus on two of the most common and important rules that states change in real-world international negotiations.

¹⁰ In standard international bargaining, this no-agreement outcome is typically, though not always, the status quo (Muthoo 1999); in crisis bargaining, this outcome is assumed to be war, with some probability assigned to each state winning the war (Morrow 1999).

BATNA-altering strategies

The first type of rule-changing strategy is characterized by threats and actions designed to worsen other states' best alternative to a negotiated agreement (BATNA). Several different strategies can be used to accomplish this goal. The threat to use force or sanctions if concessions are not made falls in this category of behavior, as do actions that actually carry out such a threat. These types of strategy shift an opposing state's BATNA from the current status quo to an outcome in which sanctions or force are used against it.¹¹ Threats to go it alone, or to act unilaterally, also remove the status quo option from the table. Instead of having the status quo to fall back on, an opposing state that does not sign on to an agreement faces an outcome in which a decision will still be reached, but it will be left out of the decision-making process and any future cooperative interactions associated with the agreement.¹²

While the substantive nature of these strategies differs, the overall effect is the same: when they are used, the utility an opposing state receives from its BATNA changes from the value it associates with the status quo¹³ to a significantly smaller (or even negative) value – the value associated with having sanctions or force used against it, or with having the agreement go forward without it. Changing an opponent's BATNA therefore creates a new phase of the bargaining process, with a new set of defining rules and characteristics. In particular, the opposing state's preference ranking of the possible bargaining outcomes changes when its BATNA is worsened. Some agreements that were originally worse than the status quo might be preferred over the costly outcome it now faces if an agreement is not reached. This gives the rule-changing state the ability to achieve an agreement that better reflects its interests than it could have achieved under the original bargaining rules. Due to their high-profile, coercive nature, the use of these types of rule-changing strategies

¹¹ The BATNA-altering effect of these types of strategy is commonly highlighted in the conflict bargaining literature (e.g., [Schultz 1998](#); [Powell 2002](#)).

¹² The BATNA-altering effect of this go-it-alone strategy is explicitly modeled by [Gruher \(2000\)](#) and [Voeten \(2001\)](#).

¹³ This discussion is framed in terms of the status quo being the alternative to agreement in the original bargaining setting. However, this need not be the case. A strategy that worsens a state's outside option changes the outcome associated with no agreement such that the opposing state's payoff from not reaching an agreement is significantly less under the new bargaining context than its payoff from "no agreement" under the original set of contextual rules, whatever that alternative happened to be.

is often highlighted by scholars, analysts, and observers of international bargaining.

Example of threat or use of force. To illustrate how a state can use a threat of force as a rule-changing strategy, consider North Korea's actions throughout the late 1990s and early 2000s – actions that were designed to increase the threat of military aggression. On several occasions during this period, North Korea entered into negotiations with states such as South Korea and the United States. Whenever North Korea failed to win concessions in those negotiations, it adopted strategies designed to increase the threat of military aggression, thus making its opponent's potential no-agreement alternative more costly. For example, North Korea tested its first ballistic missile over Japan in 1998, and tested its first nuclear device in 2006 – directly after such negotiation failures. With the increased threat of a military attack now looming over its bargaining opponent's no-agreement outcome, North Korea could extract concessions in return for removing that threat. This is what North Korea did. Following both tests, it invited its bargaining opponent to resume the talks, and won the concessions it desired in return for a promise to take steps toward dismantling its nuclear program.¹⁴ These strategies by North Korea help to show this type of confrontational rule-changing strategy at work in international bargaining. It went outside the scope of the negotiation itself, altering the status quo by increasing the threat of nuclear aggression. Its opponent's BATNA was therefore worse than the original status quo, and North Korea exploited this in order to win concessions it originally could not receive.

Example of threat or use of sanctions. The use of sanctions against South Africa in the 1980s provides another example of a confrontational rule-changing strategy. For several decades previously, the UN had attempted to push South Africa to end apartheid by applying various forms of political pressure – passing resolutions condemning South Africa's apartheid policies¹⁵ and imposing voluntary arms embargoes against it.¹⁶ Individual states also tried to negotiate with South Africa to

¹⁴ Note that North Korea did, however, break that promise after receiving its desired concessions (Choe 2009). The key point to note in this example is that the threat it used helped it to win its desired concessions. For more on this case, see [BBC Worldwide Monitoring 2007](#); Choe 2009.

¹⁵ UNGA Resolution 1761.

¹⁶ This was UNSC Resolution 181. A mandatory arms embargo was also imposed in 1977 by UNSC Resolution 418.

end apartheid. However, none of these attempts was successful. Finally, in 1973 the United Nations condemned South Africa at the World Conference against Racism and passed the “International Convention on the Suppression and Punishment of the Crime of Apartheid.” This instigated moves that began to target South Africa’s economy. First, a divestment movement began. Investors in South African companies, or companies that did business in South Africa, were pressured to divest their funds from these companies. By the late 1980s, this divestment movement was widespread. In addition, the United States and the United Kingdom – two of South Africa’s largest trading partners – placed various trade sanctions on South Africa, as did twenty-three other nations. These combined economic sanctions worsened South Africa’s status quo, “no-policy-change” outcome by imposing significant economic costs on the country. By 1987, the growth rate of South Africa’s economy had dropped to one of the lowest in the world. South Africa’s willingness to move from the no-policy-change outcome thus increased, and negotiations to end apartheid began in the 1990s.

Example of a threat to “go it alone.” Negotiations in the 1980s and 1990s among the European states provide an example of a go-it-alone, rule-changing strategy. France and Germany wanted to create what is now referred to as the European Monetary System (EMS) – a monetary system that would remove the freely floating exchange rates that currently characterized economic relations between the states of the European Community (EC). Italy and the United Kingdom preferred to remain at the status quo, characterized by freely floating exchange rates, among all EC countries. However, France and Germany were prepared to “go it alone” – that is, to move forward with the creation of this monetary system, even without the participation of other states. Doing so would remove the current status quo world of freely floating exchange rates that Italy and the United Kingdom preferred over the creation of the EMS. The new no-agreement alternative for these states would thus be characterized by the existence of the system without them as members. They preferred to join the system rather than to face their new BATNA – to have the system exist, and to exist without them. The threat to go it alone therefore convinced Italy and the United Kingdom to give up their monetary autonomy and join the EMS, even though they did not originally support this form of integration.¹⁷

¹⁷ Gruber 2000, ch. 8.

Issue linkage strategies

The second type of rule-changing strategy affects the set of issues being negotiated by using linkage tactics. Linkages can be carried out in both confrontational or cooperative ways. A state could link an issue to a negotiation in a confrontational way by “holding that issue hostage” – threatening to impose costs on the linked issue if concessions are not made on the original issues.¹⁸ Alternatively, a state could link an issue to a negotiation in a cooperative way through an offer of “side payments” – that is, offering concessions on an outside issue – in return for concessions on the issues being negotiated.¹⁹

The effect of both of these issue linkage strategies is to alter the set of issues being negotiated. By its very nature, the linkage of issues in a negotiation means that rather than analyzing its payoff from each issue individually, each state compares its *joint* payoff across all issues to the payoff from its no agreement outcome. Payoffs associated with the set of possible outcomes on the original issue can therefore be altered by adding costs or benefits on another linked issue.²⁰ If state 1 links a new issue in a confrontational way by holding it hostage, the payoff to state 2 from achieving its ideal point on the original issue is lessened by the cost state 1 imposes on the new “hostage” issue. If state 1 links a new issue by offering a side payment on that issue, the payoff to state 2 from allowing state 1 to win on the original issue is increased by the benefit state 1 offers on the new issue. Altering the payoffs associated with winning on the original issues in this way changes the type of agreement we are likely to see. Two examples help to highlight these effects in different settings.

Example of holding a linked issue hostage. A dispute between Japan and China in October 2010 helps to illustrate a confrontational linkage strategy. The dispute began when Japan detained the master of a Chinese shipping vessel after his boat collided with Japanese patrol vessels in disputed waters that were controlled, at the time, by Japan. China responded by cutting off shipments to Japan of raw materials that were crucial in the manufacturing of many high-technology products – the

¹⁸ Pruitt 1981; Sebenius 1983; Sebenius 1992.

¹⁹ Haas 1980; Grieco 1990; Keohane 1982.

²⁰ While these *strategies* differ in the degree to which they are cooperative, they both lead to a cooperative *outcome*, as defined in the formal issue linkage literature – the reaching of an agreement (Tollison and Willett 1979; Sebenius 1983). This interesting duality is discussed in more detail in the concluding chapter.

centerpiece of Japanese industry. This issue was thus added as a “hostage” to increase the cost of detaining the Chinese captain, making these costs so high that Japan would be willing to release him in order to have trade in these products returned. This is exactly what happened in the subsequent negotiations.

Example of offering a concession on a linked issue. The mediation technique used by the United States in the negotiations between Israel and Egypt at Camp David in 1978 provides an example of a cooperative linkage strategy. The United States was engaged in an effort to mediate between Israel and Egypt, who were negotiating a peace treaty designed to end a long and costly conflict between them. To help bring about an agreement, the United States linked the issue of military aid – offering concessions on this issue in order to gain concessions from Egypt and Israel in their conflict over the Sinai peninsula. It offered Israel about \$2.5 billion annually in grants and military aid in exchange for Israel’s agreement to withdraw its armed forces and civilian inhabitants from the Sinai peninsula, restoring control to Egypt. In addition, it offered about \$1.3 billion annually to Egypt in military aid in return for Egypt conceding that it would limit the military forces it would place on its newly returned Sinai peninsula, as well as to allow free passage through the Suez Canal.²¹ Though these side payments were not publicly tied together with the bargaining process, they were presented as “rewards” for the improved relations “which expanded significantly in the wake of the Egyptian–Israeli Peace Treaty in 1979.”²² The side payments made by the United States thus helped Israel and Egypt make the concessions that had to be made if a peace agreement was to be reached.

Summary of the typology

This typology is the dependent variable of interest throughout the remainder of the book. It highlights two dimensions of variation in states’ bargaining strategies. These strategies vary depending on (1) whether they comply with the contextual rules governing a negotiation or change them, and (2) the cooperative/confrontational way in which they do so. The theoretical argument presented in the next two chapters is designed to explain the variation in states’ strategies that exists across these two dimensions.

²¹ US Department of State 2010, 2011.

²² Quote from US Department of State 2010.

How states play by the rules

Most states, most of the time, act within the constraints created by the rules of the negotiation in which they find themselves. Threats are not made to resort to force if a favorable agreement is not reached, and states do not threaten to sanction other states if concessions are not received. Most of the time, states sit down at the bargaining table with other states and try to achieve their interests, given what they have to work with. An occasional threat or an occasional side payment might be made, but the international bargaining scene is not a constant changing of the bargaining agenda, nor is it a constant back and forth of coercive threats, leading to impasse and the potential for war to break out.

In other words, most international negotiations are characterized by states “playing by the rules” of the game. The strategies they adopt when doing so, however, vary widely from state to state and negotiation to negotiation. In some cases, states adopt *cooperative* strategies, offering concessions on the issues over which they are negotiating. In others, they adopt *confrontational* bargaining behavior, threatening to veto or delay agreements to extract concessions from other states. These two ideal-types represent opposite ends of an underlying continuum of concession-offering/concession-extraction along which any rule-compliant bargaining strategy can fall. Drawing on this conceptualization, the goal is to understand when and why states adopt more cooperative or more confrontational bargaining strategies. What makes states willing to offer concessions and what causes them to veto (or threaten to veto) agreements?

This chapter explains this variation, focusing on the effects that the “rules of the game” have on the strategies states adopt when playing by those rules. Three “contextual” rules, which are summarized in Table 3.1, are particularly important in this analysis: (1) the *set of issues on the bargaining agenda*, which defines the “issue linkage structure” of the negotiation, (2) the *set of available alternatives to agreement*, which defines each state’s best alternative to negotiated agreement (BATNA),

Table 3.1. *Contextual rules of the game*

Bargaining rule	Characteristic of the negotiation defined by each rule
(1) Set of issues on the bargaining agenda	Distribution of states' interests across the issues being negotiated (the "issue linkage structure")
(2) Set of available alternatives to agreement	Value of each state's best alternative to negotiated agreement (BATNA)
(3) Absolute/relative gains context	Degree to which states focus on absolute or relative gains from agreement

and (3) the *absolute/relative gains context* of the negotiation, which is a function of the issue area under consideration and other external pressures. While other bargaining rules are clearly relevant,¹ these three capture key features of the general bargaining context of an international negotiation, regardless of its bargaining protocol. Analyzing the effects of these three rules can therefore help us to better understand state bargaining behavior across a wide range of international negotiations. This chapter highlights these effects, providing illustrative examples from real-world cases of international bargaining and deriving hypotheses that are empirically tested in later chapters.

Contextual rule 1: issue linkage structure

A first contextual rule that governs states' bargaining interactions stems from the set of issues on the bargaining agenda and the distribution of states' interests across those issues. Each state is likely to value the issues included on the bargaining agenda differently. Some issues might be very important to a state's interests, while others are less important, or not very important at all. The salience of each issue can vary from state to state, and across the full range of agenda items. The particular distribution that characterizes each negotiation creates incentives and constraints that affect states' bargaining behavior, with implications for the types of strategies they can, and are likely to, adopt.

¹ For example, Singh (2008) focuses on a different set of contextual factors – the number of issues, the number of actors, the number of domestic coalitions, and the market power of domestic firms.

It is almost never the case that states bargain over one single issue. There are almost always several issues at stake, and those issues can differ in salience to opposing states. For example, in the negotiations over the Kyoto Protocol, it was not just climate change over which states were negotiating. They were negotiating over many issues, such as: the levels of required emissions reductions for developed countries, whether a reference to voluntary participation by developing countries would be included in the Protocol, if and how emissions reduction requirements could be traded among states, whether or not to create a fund to support countries facing the adverse effects of climate change, how the funds would be collected for such support, and more. Some of these issues were very important to some states, while different issues were important to others.

The way states value the issues on the bargaining agenda is clearly case-specific, and depends on the substance and context of the negotiation. However, it can be studied, in a general way, through an analysis of the “issue linkage structure.” This concept captures the overall distribution of states’ interests across the set of issues on the bargaining agenda. An issue linkage structure characterized by issues that *are differently valued*² is created in any negotiation where states (or coalitions) with opposing interests place most value on winning on different issues. In the ideal type, a negotiation characterized by the linkage of issues that are differently valued occurs when the agenda includes issues X and Y, and issue X is most important to state 1’s interests and issue Y is most important to state 2’s interests. An issue linkage structure characterized by issues that are *not differently valued* is created in any negotiation where opposing states (or coalitions) place most value in winning on the same issue (or issues) on the agenda. In the ideal type, issues are not differently valued if, in a negotiation over issues X and Y, winning on issue X is most important to the interests of both state 1 and state 2.

Analyzing the effects of these two ideal-type issue linkage structures, the literature shows that if states are negotiating over issues that are *not differently valued*, the size of the zone of agreement – the set of agreements that all negotiating states would be willing to accept – is small, and potentially does not exist.³ In contrast, if the issues being negotiated together *are differently valued*, this opens up

² Issues that are “differently valued” by opposing states have also been referred to as “off-setting issues” (Tollison and Willett 1979), issues that “differ in their relative salience” (Morgan 1990; Morrow 1992), and issues characterized by “preference heterogeneity” (Martin 1994). These terms all refer to the same general concept described here.

³ Sebenius 1983; Morgan 1990.

the possibility for states to trade concessions across the issues they value differently. A zone of agreement is therefore created when these issues are negotiated together – even if one did not exist on each issue individually.⁴

Implications for state bargaining strategies

As the current literature shows, the issue linkage structure has important implications for states' ability to reach an agreement because it affects the size of the zone of agreement. If states do not value the issues differently, and a zone of agreement therefore does not exist, there are no agreements that both states would be willing to accept. However, if states are negotiating over issues they do value differently, a zone of agreement does exist, increasing states' ability to reach a negotiated agreement. This cooperation-inducing effect is illustrated in several studies, both theoretical and empirical.⁵

While this literature contributes to our understanding of international bargaining, it overlooks two issues that complicate states' ability to reach an agreement. First, current arguments do not account for the fact that each individual state must *choose* whether or not to offer the concessions from its ideal point that are needed to reach the zone of agreement. This is important because each state must make this choice in the face of *strategic uncertainty* regarding whether or not a cooperative strategy will be exploited or reciprocated by the other side. Indeed, this is the central problem of international cooperation. Both states may prefer mutual cooperation over mutual defection, but if incentives exist to exploit concession-offering behavior, states are unlikely to adopt the strategies necessary to reach a cooperative outcome.⁶ How states overcome this cooperation problem and become willing to offer concessions when bargaining under the condition of strategic uncertainty is a central question that must be addressed.

Second, current issue linkage arguments are based almost solely on two-state, two-issue negotiations. They do not deal with the fact that

⁴ Tollison and Willett 1979; Sebenius 1983.

⁵ For examples, see Tollison and Willett 1979; Sebenius 1983; McGinnis 1986; Morgan 1990; Morrow 1992; Martin 1994; Lohmann 1997; Frieden 2001; Davis 2004; Conceição-Heldt 2008; and Poast 2012.

⁶ Indeed, this is the central premise of the prisoner's dilemma which is used to analyze the standard cooperation problem. For examples, see Axelrod 1984; Keohane 1984. As shown below, this problem exists in international bargaining, in addition to interactions that more directly correspond to a prisoner's dilemma model.

multiple states are often involved in international negotiations over multiple issues. In this multidimensional bargaining space there are a significant number of potential agreements. These potential agreements have different distributional implications for the negotiating states, and can be subject to dominating effects, as highlighted by the chaos theory results.⁷ How states settle on one particular agreement over others is also a central question that must be addressed.

These two shortcomings can be overcome by recognizing that the linkage of issues that are differently valued not only creates a zone of agreement, but it also creates a *focal point*. This focal point coordinates states' expectations around a particular agreement (or small subset of agreements) that are characterized by an exchange of concessions across the issues that the states value differently. By doing so, it helps states overcome both problems highlighted above, incentivizing states to make the individual concessions necessary to bring about a cooperative agreement.⁸ First, having a focal point mitigates the problem of dominating effects that complicate multidimensional negotiations, because it eliminates a large set of "possible" agreements from states' overall strategic choice set. Agreements that are not characterized by the concession exchange around which the focal point has developed are removed from consideration (even if they fell in the original zone of agreement). This reduces the set of "probable" agreements, lessening the potential for dominating proposals. Second, having a focal point helps to overcome the cooperation problem. The existence of a focal point coordinates states' expectations around an agreement they all have a strategic incentive to reach. This helps to overcome the problem of strategic uncertainty, thus allowing them to adopt the strategies necessary to bring about an agreement.

A simple example can help to illustrate this logic. Consider three states (1, 2, and 3) bargaining over three issues (A, B, and C). For simplicity, also assume that each issue is indivisible. Three cases are possible, illustrating varying degrees to which the states "differently value" these issues.

Case 1: issues not differently valued. A first possible case is characterized by all three states placing most value in winning on issue A as well as having differing positions on that issue. The three states place

⁷ See the findings of McKelvey 1976, 1979; Schofield 1978; McKelvey and Schofield 1987.

⁸ For evidence that a coordination of expectations can help to bring about bargaining agreements, see Carpenter 2003.

Table 3.2. *Possible bargaining outcomes in issue linkage example*

Outcome label	Substantive outcome definition
Possible outcome #1	A,B,C
Possible outcome #2	A,C,B
Possible outcome #3	B,A,C
Possible outcome #4	C,A,B
Possible outcome #5	B,C,A
Possible outcome #6	C,B,A

little value on issue *B* and even less value on issue *C*. This case is therefore one in which the issues are not differently valued.

There are six key outcomes to consider.⁹ These outcomes are referred to as outcomes #1–#6 for simplicity, and their defining characteristics are laid out in Table 3.2. In outcome #1 (A,B,C), state 1 wins on issue *A*, state 2 on issue *B* and state 3 on issue *C*, and in outcome #2 (A,C,B), state 1 wins on issue *A*, state 2 on issue *C* and state 3 on issue *B*. State 1 prefers these two outcomes over any other because it wins on issue *A*. In contrast, states 2 and 3 would prefer an outcome in which they each, respectively, get to win on issue *A*. State 2 therefore most prefers outcomes #3 (B,A,C) and #4 (C,A,B) – the outcomes in which it wins on issue *A* – and state 3 most prefers outcomes #5 (B,C,A) and #6 (C,B,A).

In this type of negotiation, where the issues are *not differently valued*, there is no clear agreement that stands out above any others. For states 2 and 3, outcome #1 < #4, for states 1 and 3, outcome #4 < #5, and for states 1 and 2, outcome #5 < #1, creating a cycle of dominating outcomes. Similarly, for states 2 and 3, outcome #2 < #6, for states 1 and 2, outcome #6 < #3, and for states 1 and 3, outcome #3 < #2, creating a second cycle of dominating outcomes. No single agreement (or subset of agreements) is preferred by all three states over any other.

⁹ There are other possible outcomes – that is, those in which one of the states wins on multiple issues. An analysis of all of these outcomes is simply a more extreme version of the analysis of the six outcomes here. The six outcomes considered represent all possible payoff orderings that the full range of outcomes can have. For example, the outcome in which state 1 wins on both issues *A* and *B*, state 2 wins on issue *C* and state 3 wins on none of the issues is characterized by the same ordering of the payoffs as the outcome in which state 1 wins on *A*, state 2 on *B* and state 3 on *C*. All possible combinations of payoff orderings are therefore covered by this simplified analysis, and the conclusions generated from them hold.

This type of issue linkage structure affects the incentives states face when choosing their bargaining strategies. First, it does not create a bargaining setting in which a state can “trust” that its adoption of a cooperative strategy will not be exploited by other states.¹⁰ This creates incentives against the offering of concessions. For example, states 2 and 3 might try to team up to get outcome #4. This leaves state 2 with its best possible outcome (winning on issue *A*), and state 3 with its second best outcome (winning on issue *B*). But state 2 cannot trust that its own offer of concessions on issue *B* will not be exploited by state 3. If state 2 offers concessions on issue *B*, this could be taken as a signal of bargaining weakness¹¹ – showing that reaching an agreement is very important to its interests. Inferring that state 2 is likely weak, state 3 could then team up with state 1 to try to extract further concessions from state 2. They could work together to try to get outcome #5, where state 3 wins on issue *A* and state 1 wins on issue *B*. Both improve their own payoff from the agreement by doing so – winning on a more important issue than they would under outcome #4, while state 2 is worse off. State 2 cannot trust that its adoption of a cooperative strategy will not be exploited, and indeed, state 3 has a positive incentive to take advantage of state 2’s willingness to offer concessions in this way. This creates a strategic incentive against approaching state 3 with the cooperative offer in the first place. The same problem exists for all states hoping to win on issue *A* by initiating an offer of concessions to another state on issue *B*.

Not only do incentives exist not to adopt cooperative strategies, but positive incentives exist to adopt confrontational ones. The same issue is most important to the interests of all three states. All three are therefore fighting to win on issue *A*, regardless of its linkage to *B* and *C*. This creates incentives for the adoption of confrontational, concession-extracting types of bargaining strategies as states fight against each other in order to win as much as possible for themselves.

Overall, negotiations involving issues that are not differently valued create incentives for states to adopt confrontational strategies and create incentives against the adoption of cooperative ones. We are therefore likely to observe concession-extracting and concession-demanding

¹⁰ In other words, “strategic trust” does not exist in this case. See [Uslander \(2002\)](#), [Rathbun \(2011a\)](#), and [Rathbun \(2011b\)](#) for a description of strategic trust.

¹¹ [Morrow 1992](#).

tactics combined with little to no concession-offering in negotiations with this type of issue linkage structure.¹²

Case 2: issues somewhat differently valued. Consider a second possible case. In this case, states 1 and 2 place most value in winning on issue *A* and care second about issue *B*, while state 3 places most value in winning on issue *C*. These issues are somewhat differently valued – state 3 values a different issue than the other two states, but states 1 and 2 do not value the issues differently. Because the other two states do not care about issue *C*, a focal point arises around outcomes in which state 3 wins on issue *C*. Neither state 1 nor state 2 would prefer to win on issue *C* over issue *B* or issue *A*. Thus, while all six of the above outcomes are possible, only two are “probable.” At least two of the three states prefer the following two outcomes over any other: states 1 and 3 prefer outcome #1 over any other agreement and states 2 and 3 prefer outcome #3 over any other agreement. States 1 and 2 must still fight over winning on issue *A*, but the set of potentially dominating agreements is significantly reduced by the issue linkage structure of this case – it is reduced from six to two.¹³

This type of issue linkage structure creates incentives for a mix of concession-offering and concession-extracting tactics. State 3 has an incentive to form a coalition with either state 1 or state 2 and exchange concessions across issues *C* and *A* within that coalition. Those two states can then work together to adopt concession-extracting tactics from the outlying state in order to bring about an agreement. This would lead to the best possible agreement for state 3, as well as for the state it teamed up with.

The concession exchange between state 3 and its partner is also *sustainable* when the issues are somewhat differently valued. In such a case, the concession exchange across issues *C* and *A* between state 3 and its partner is backed by “strategic trust” – the existence of a strategic incentive *not* to defect on the other. If states 1 and 3 team up together and state 1 offers concessions on issue *C*, state 3 has no incentive to exploit that offer. Returning concessions to state 1 on issue *A* would leave it with its best possible outcome (winning on issue *C*). Similarly, if state 3 offers

¹² This is likely to be the case even if the BATNAs of the negotiating states are costly such that all six outcomes fall within the zone of agreement. Even if all six outcomes are preferred to the no agreement outcome, states still cannot trust that their concession-offering will not be exploited and still face a zero-sum bargaining setting. This leads to the adoption of confrontational tactics whether or not a zone of agreement exists.

¹³ Specifically, for all three states: outcome #2 \leq #1, outcome #4 \leq #3, outcome #5 \leq #3, and outcome #6 \leq #1.

concessions on issue *A* to state 1, state 1 has no strategic incentive to exploit that concession offer. Returning concessions to state 3 on issue *C* would leave it with its best possible outcome (winning on issue *A*). Within the coalition, the exchange of concessions is therefore fostered through the strategic trust created by the issue linkage structure. Overall, a mix of concession exchange and concession extraction is fostered by a somewhat differently valued issue linkage structure.

Case 3: issues are differently valued. Finally, consider a third possible case. In this case, state 1 prefers to win on issue *A*, state 2 prefers to win on issue *B*, and state 3 prefers to win on issue *C*. This is a case in which the issues are completely differently valued. Each state wants to win on a different issue. In this case, while all six outcomes are possible, states' interests and expectations coordinate around one particular outcome, creating a focal point. This focal point is characterized by state 1 winning on issue *A*, state 2 winning on issue *B*, and state 3 winning on issue *C* (outcome #1). Despite the fact that the states are bargaining in multi-issue space, no other potential agreement dominates this one. A differently valued issue linkage structure therefore creates the opportunity for a mutually beneficial exchange of concessions. Each state can offer concessions on the issues that are less important to its own interests (and more important to the interests of opposing states) and receive concessions in return on the issue that is most important to its own interests.

However, such an exchange still requires that each state, individually, adopt a cooperative bargaining strategy in the face of uncertainty regarding whether or not their cooperative strategies will be reciprocated or exploited. By creating one dominating outcome that all states prefer over any other, an issue linkage structure characterized by issues that are differently valued creates a situation characterized by strategic trust. State 1 can trust that an offer of concessions to state 2 on issues *B* and to state 3 on issue *C* will be reciprocated by an offer of concessions on issue *A* because states 2 and 3 have a strategic incentive to do so. Exchanging concessions in this way will allow them each to achieve their most beneficial outcome. They therefore do not have an incentive to exploit state 1's offer of concessions, but instead to offer concessions in return to bring that agreement about. With each state realizing that the others have a strategic incentive to offer it concessions, an incentive exists for that state to offer concessions too.¹⁴

¹⁴ This effect of the issue linkage structure therefore parallels the cooperation-inducing effect of other institutions, as described by the neoliberal institutionalist literature (e.g.,

While this example is clearly simplified for illustrative purposes, it shows how the linkage of issues that are more differently valued (1) creates a focal point that fosters individual incentives to adopt cooperative bargaining strategies, and (2) helps states to overcome the problems of dominating proposals and counter-proposals, by decreasing the number of potential outcomes states would actually support in multilateral, multi-issue negotiations. Taken together, we can therefore expect that the more differently valued are the issues linked together in a negotiation, the more cooperative states' bargaining strategies are likely to be.

*HYPOTHESIS 1: The more differently valued are the issues over which states are bargaining, the more cooperative the bargaining behavior of all states will be, all else constant.*¹⁵

Empirical illustration: Kyoto Protocol negotiations

To illustrate this argument at work in a complex, multi-state, multi-issue setting, consider the different sets of issues on the table in the various phases of the Kyoto Protocol negotiations, and the effect that changes in the issue linkage structure had on the strategies states adopted. This multilateral bargaining process took place in December 1997, involved 191 negotiating states, and, to date, is one of the most important agreements in the history of climate change negotiations. Agreement was reached in the final days of the negotiations, despite divisive and contentious debates early on in the process. One important factor that contributed to this change was a change in the issues being negotiated and thus a change in the distribution of states' interests across those issues.

At the outset of the Kyoto Protocol negotiations, several important issues were on the table for discussion. These issues included: (1) the required emission reduction targets for "Annex I" states (i.e., developed

Keohane 1984; Axelrod and Keohane 1985; Simmons 1998, 2000). For a discussion of this same effect exerted by other institutions, see Rathbun 2011a.

¹⁵ It should be noted that this prediction should hold *independent* of the other two contextual rules (i.e. the issue linkage structure does not interact with these other rules to exert this predicted effect). Neither of the other rules affects the fact that strategies are likely to be more cooperative in a situation where a concession exchange of some kind is possible versus a situation when no state has an interest in making concessions. The size of the concessions made when issues are differently valued might vary depending on states' bargaining power and the absolute/relative gains context. However, any exchange is still more cooperative than no exchange at all – no matter how one-sided it is.

states), (2) whether the emissions targets for all developed states would be the same or whether those targets would be differentiated, (3) whether the “negative emissions” created by “sinks” – carbon dioxide (CO₂)-absorbing ecosystems such as oceans, forests, and soil – could count toward emission reduction targets, (4) whether the Protocol would include reference to voluntary participation in emissions reduction by developing countries, (5) whether states would be required to meet their reduction targets individually or whether they could “jointly implement” emission reductions, and (6) the creation of a “Clean Development Fund” which would fine developed countries for non-compliance and use these funds to support clean development projects in developing countries.

An analysis of the distribution of states’ interests across these issues shows that they were not differently valued by the negotiating states. Instead of attaching most importance to winning on different issues, states with opposing positions focused on achieving their own interests on the same central issues. For example, the issue of developing country participation in the emission reduction process was extremely divisive. Developing countries did not want to take any steps that would require them to reduce their emissions. Even voluntary commitments might put them on this path, which they argued would threaten their ability to develop economically and compete in the international market. On the other side, the United States was concerned about its own ability to remain competitive. It did not want to have to make binding emission reduction commitments while economic competitors like China did not have to do so simply because of their developing country status. The United States had a strong interest in securing some sort of developing country participation in the reduction of emissions to prevent this. The question of whether or not to include developing country emission reduction targets in the agreement was therefore central to the interests of the states on both sides.

When this issue was raised in the negotiations, the bargaining behavior of the developing states was highly confrontational, as would be expected given the fact that they were strongly opposed to its inclusion, and knew that the United States was inflexible as well. Over thirty developing countries took the floor in opposition, forcing an end to negotiations that day.¹⁶ This type of behavior reflects an unwillingness to offer concessions. Together with the delaying tactics they adopted, the strategies adopted by the developing countries were highly confrontational in nature.

¹⁶ Schröder 2001.

As a second example, the “differentiation of emission reduction targets” was another divisive issue – this time between the United States and Japan, on one side, and the EU, on the other. The EU states supported higher emission reduction targets, and wanted the United States and Japan to meet the same targets they were proposing for themselves. In contrast, the United States and Japan wanted lower targets for themselves than those being pushed by the EU. When negotiating, each side maintained that their bargaining position should be the outcome reached, refusing to make concessions to the other. Overall, the demands and lack of concession-offering by both sides led to a bargaining impasse and a suspension of the discussion until the high-level segment in the final days of the conference.

The delaying, demanding, and lack of concession offering during the early days of the Kyoto Protocol negotiations highlight the largely confrontational behavior that characterized these negotiations. This behavior is consistent with the fact that the issues were not differently valued.

Between this beginning phase and the final phase of the negotiations, several major changes altered the issue linkage structure. First, the EU conceded its position on the “sinks” issue by accepting that the negative emissions created by sinks could be used by a state to help meet its required emission reductions. This concession changed the emission reduction discussions from a question of pure emission reduction requirements to a question of targets that could be met through actual emission reductions and/or by retaining sinks. The second important change came from a behind-closed-doors negotiation which merged the idea behind the Clean Development Fund and the idea of joint implementation to create the “Clean Development Mechanism.” This new mechanism would allow developed states to earn emission reduction credits for funding clean development projects in developing countries, and a percentage of the funds would go to an “Adaptation Fund” designed to help countries deal with the adverse effects of climate change. Finally, the chair of the negotiations removed the article calling for actual emission reductions by the developing states.

These changes altered the set of issues on the table and the distribution of states’ interests over them. States that still placed a high degree of salience on a particular issue now faced opposing states that were more concerned with something else. For example, the agreement on sinks meant that the United States could account for almost 3 percent of its emission reduction requirements simply by counting

the negative emissions created by its sinks.¹⁷ Winning on the issue of emission reduction targets became less important to the overall interests of the United States, as accepting higher targets no longer directly translated into greater costs on US industries and their ability to be competitive in the international market. The United States thus became more flexible and was willing to take on higher targets than it was originally willing to accept.

With this change on the part of the United States, the EU, which had adamantly opposed differentiated targets between the developed countries, became more flexible. With the United States willing to accept higher targets, the difference between the EU and US targets could now be significantly smaller. The targets that were accepted by the United States, which were higher than it originally wanted, would therefore be at least symbolically closer to those accepted by the EU, helping to ease the EU's domestic pressures for equivalent obligations.

Finally, with the removal of the article calling for developing country participation, the developing countries were happier, and the US position shifted. The United States now placed significant importance in pushing through the Clean Development Mechanism, ensuring that *some* mechanism for participation by developing countries would be included. On the other side, the developing countries placed most importance on keeping the article specifically calling for developing country emission reductions out of the agreement.

While this description is clearly simplified, it helps to illustrate that in this final phase of the negotiations the issues *were differently valued* by states with opposing positions. The bargaining strategies that were adopted reflected this change in the issue linkage structure, and followed the "focal point" expectation of a potential exchange of concessions across these issues. The United States conceded that developing country participation would remain off the agenda and accepted a higher emission reduction target than originally planned (7 percent). The EU conceded and accepted a higher, 8 percent target for itself. Developing countries like China and Brazil accepted the Clean Development Mechanism, which would involve them in the emission reduction process. With fewer emission reduction requirements placed on its industries due to its ability to count sinks toward its emissions reduction target and the

¹⁷ In particular, as Schröder (2001) argued, the inclusion of sinks meant that instead of its 7 percent reduction requirement, the United States "effectively only had to reduce its [greenhouse gas] emissions by 4 percent" (Schröder 2001: 67).

fact that some level of developing country participation was present in the agreement, the United States signed on – even though developing country emission reduction targets were not included.

While there were many other factors at work in this case, this example helps to highlight the underlying logic of the argument regarding the effects that different issue linkage structures have, and does so using a highly complex, multilateral, multi-issue negotiation.

Contextual rule 2: set of alternatives to agreement

A second important contextual rule that affects states' bargaining strategies is the set of possible no-agreement alternatives. It exerts these effects by defining what each state's *best* alternative to negotiated agreement (BATNA) can be. As many works on negotiation theory show, the BATNA is a key source of bargaining power/weakness for those involved in a negotiation.¹⁸ Moreover, as shown throughout the book, it is the *main* source of power in negotiations in which states play by the rules. By defining states' BATNAs, the set of alternatives to agreement exerts important effects on states' bargaining behavior.

The nature of the BATNA depends on the context of the negotiation. In negotiations designed to create new cooperative policies, the no-agreement alternative is defined by the status quo. A state that faces costs if the policies being negotiated are not adopted (and the current policies therefore remain in place) has a more costly BATNA than the BATNA of a state that is not interested in the establishment of these new policies. In negotiations over the renewal of some pre-existing policy, the outcome that would result if an agreement is not reached would be a termination of that current policy. A state that needs the policy to continue will thus have a costly BATNA. In contrast, states that actually want the current policy to end would have a better BATNA. In crisis bargaining situations, war is the alternative to agreement for both sides.¹⁹ The greater a state's expected utility from war (i.e., the more likely it is to win the

¹⁸ This source of bargaining power was highlighted in John Nash's (1950a; 1953) ground-breaking analyses of strategic bargaining interactions, and has since been cited in bargaining analyses across a wide range of approaches and disciplines. For examples of works that reference the BATNA as a key source of bargaining power, see Fisher and Ury (1981); Raiffa (1982); Morrow (1999); Muthoo (1999); Odell (2000); and Voeten (2001). Note that states' alternatives to agreement are also sometimes referred to as their "outside options" (e.g., Voeten 2001).

¹⁹ e.g., Fearon 1995.

impending war), the fewer costs it will have to face if an agreement is not reached and war breaks out.²⁰ A state that is more likely to win the war underpinning a crisis bargaining situation therefore has a better BATNA than the state that is less likely to win that war.

Regardless of how it is defined, a state's BATNA is an important source of bargaining power (or weakness). It gives a state something to fall back on if an agreement is not reached. If a state's BATNA is costly, it is in a position where it needs to reach an agreement – *any* agreement – to avoid that costly alternative. It therefore has little leverage that it can use to shape that agreement in the bargaining process. However, if a state's BATNA is less costly, it is in a position where reaching an agreement, in and of itself, is less important to its interests. That state can use the fact that it does not need just any agreement as leverage to get an agreement that better reflects its interests.²¹

Implications for bargaining strategies

Applying this argument to explain variation in the cooperative nature of states' bargaining strategies is simple and intuitive. When playing by the rules of a given bargaining game, a state with a beneficial BATNA is likely to adopt a more confrontational bargaining strategy, extracting concessions from the other side. In contrast, a state facing a costly BATNA is likely to adopt a more cooperative strategy, offering concessions to its bargaining opponent.

A state with a beneficial BATNA is likely to adopt a confrontational type of rule-compliant strategy, all else constant. Having a good BATNA yields a high "reservation price" – the minimum payoff from agreement a state is willing to accept.²² A large set of potential agreements that are not characterized by the receipt of significant concessions will fall below this high reservation price. The payoff that would stem from these potential agreements will be lower than the payoff associated with not reaching an agreement. When these are the types of offer made, a state with a

²⁰ Schelling 1966.

²¹ Building on Nash's (1953) argument, a state's bargaining power can be understood as an inverse function of its "reservation price." A state with a high reservation price has more bargaining power than it would if it had a low reservation price. Given that a state's reservation price is defined by its best alternative to agreement (or best outside option), bargaining power is therefore defined by the beneficial nature of a state's outside options (or alternatives to agreement).

²² See Nash (1953). Also, see Morrow (1999) for an explicit description of how a state's reservation price is increased by having a more beneficial alternative to agreement.

good BATNA can credibly threaten to veto the agreement or delay the negotiations until more concessions are made. It would actually be willing to carry out those threats, if it came down to it, because it prefers the no-agreement outcome over those potential agreements.²³ Confrontational strategies are therefore likely to be effective when used by a state with a good BATNA, potentially yielding significant concessions from the other side. A state with a beneficial BATNA is likely to use these strategies in order to try to win these concessions and get an agreement as close as possible to its own ideal point.

In contrast, a state facing a costly BATNA is likely to adopt cooperative types of rule-compliant strategies. If a state's BATNA is costly, its reservation price is low.²⁴ A large number of agreements are therefore likely to fall in the range of agreements that are acceptable to this state. Even agreements characterized by the offering of significant concessions to the opposing side might still make a state with a costly BATNA better off than it would be if no agreement was reached at all. This has two effects on the bargaining behavior this state is likely to adopt. First, a state facing a costly BATNA cannot credibly threaten to veto an agreement if it does not receive significant concessions. It would actually prefer the proposed agreement over having to face its costly no-agreement alternative, and would therefore not have an incentive to actually exert the veto when it came down to it. A threat to do so would therefore not be credible. Second, a state with a costly BATNA can have its weakness exploited by opponent states, allowing them to extract significant concessions from it by using veto threats and delay tactics. The state with a costly BATNA would prefer making significant concessions in response to prevent itself from having to face the (costly) no-agreement outcome. Overall, states facing a costly BATNA are therefore likely to adopt cooperative strategies – offering concessions to the more powerful opponents in order to bring about an agreement.

These predictions can be contrasted with more standard arguments in the IR literature focusing on power defined in terms of states' material capabilities – that is, their military and economic strength.²⁵ While a state's military and economic capabilities might affect the value of its BATNA, this will not always be the case. For example, military power and the ability to win a war can have important effects in crisis bargaining,

²³ See Miller (1992: 46) for a more general argument that a better BATNA improves the credibility of threats.

²⁴ Nash 1953; Morrow 1999.

²⁵ e.g., Waltz 1979; Moravcsik 1998; Mearsheimer 2001.

but will not likely matter in climate change negotiations or trade negotiations. Having greater economic power and the ability to sanction states can be useful in some negotiations, but the threat to do so is not likely to be credible in many low-politics negotiations. Because military and economic power is not always relevant in a given issue area,²⁶ the beneficial or costly nature of a state's BATNA depends on the *substantive nature* of the issues under consideration and the *context* within which the negotiation is taking place. A state with military and economic capabilities can still "need" an agreement in the same way that states with lesser capabilities can, because its BATNA might be determined by factors other than its capabilities.²⁷ The following example helps to illustrate this point.

*Empirical illustration: Malta–United Kingdom naval
base negotiations*

In 1971, the United Kingdom wanted to renew the lease of its naval base in Malta. The United Kingdom clearly had greater military and economic power than Malta. However, in terms of their BATNAs, Malta had the upper hand. At the same time that it was negotiating its lease renewal with the United Kingdom, Malta was engaged in talks with the Soviet Union, which was also interested in placing a naval base in Malta. Despite its weakness relative to the United Kingdom in terms of material capabilities, Malta had a beneficial BATNA to fall back on if an agreement was not reached – leasing the base to the Soviet Union. This provided Malta with a source of leverage that it could use in its negotiations with the United Kingdom to extract concessions from it. It could credibly reject low offers, threatening to pursue an agreement with the Soviet Union instead. Malta was therefore able to adopt concession-extracting strategies, and this is what it did. Malta's leaders made sure that the United Kingdom was aware of the fact that it could easily turn to an agreement with the Soviet Union. It then used the threat to do so to win a significantly higher price for the use of its territory than it had received in the past.²⁸

This outcome differs from what we might predict based on an evaluation of the two states' material capabilities. Despite being weaker in

²⁶ Baldwin 1999.

²⁷ See the findings of McKibben (2013), who shows that it is states' BATNA, not material capabilities, that confer bargaining power when states bargain within the constraints of the bargaining structure (i.e., rules).

²⁸ Wriggins 1976.

terms of material capabilities, Malta was able to “win” in its negotiation with the United Kingdom. The question thus becomes: why would a state with greater material capabilities concede simply because it had a worse BATNA than its bargaining opponent? It could threaten to put its material capabilities to use against the other side – threatening it with the use of force or sanctions. Despite the fact that the other state might have a good alternative to agreement to fall back on, that beneficial alternative to agreement would not outweigh the cost of having coercion used against it. The state with greater material capabilities could therefore win in the negotiation at hand.

These types of strategy could be effective (and in some cases, they are). However, in many negotiations, this is unlikely to be the case; the threat to put material capabilities to use by using force or sanctions against a bargaining opponent if concessions are not received is simply not credible. The cost of war, or of using economic sanctions, is so high that in most international negotiations the cost of using these tactics would outweigh the benefits of the concessions that could potentially be won in the negotiation at hand. Making threats to use these material-based strategies would therefore not be credible in such a situation because opposing states would not believe the threat would actually be carried out. For example, the threat by the United Kingdom to use force or sanctions against Malta in order to secure a lower price on its lease would not have been credible – especially given that the states were trying to cooperate in military affairs by reaching an agreement in the first place. This same lack of credibility is likely to characterize the threat to use coercive measures in many other negotiations, such as those involving climate change, the creation of preferential trade agreements, and the creation of aid packages to help combat famine.

In many international negotiations, states will therefore react to the strategic incentives that stem from the opportunities and constraints created by the rules of the game, *regardless of their material capabilities*. All states will take advantage of rules that provide them with bargaining leverage and, when stuck in a bargaining game in which they face a costly no-agreement alternative, they are likely to make concessions in order to bring about an agreement – just as the United Kingdom did in its negotiation with Malta.

Overall, this logic highlights the central role that the set of alternatives to agreement plays in conferring bargaining power (or weakness) on the states involved in a negotiation. States with a beneficial BATNA are likely to be able to adopt confrontational strategies and win concessions, and

states with a costly BATNA are likely to make cooperative concessions in return.

Thus far, the argument about the role of bargaining power makes an important prediction about the source of bargaining power in international negotiations and its effects on state bargaining behavior. However, it makes this prediction while “holding all else constant.” It does not take into account the constraints that states face when trying to win concessions from a “weaker” opponent. These constraints are especially evident when we consider the absolute/relative gains context of the negotiation.

Contextual rule 3: absolute/relative gains context

The context of an international negotiation is important because it affects the degree to which states focus on the *absolute* or relative gains stemming from that particular bargaining interaction. A focus on *absolute gains* means that states focus on their own gains (or losses) that result from a particular bargaining outcome. A focus on *relative gains* means that states focus on how much they gain (or lose) relative to the other states involved in the negotiation.

The degree to which states focus on absolute or relative gains can vary widely, depending on the substance and context of a given negotiation. For example, (1) negotiations that touch on sensitive issues of state sovereignty or security,²⁹ and (2) negotiations that might affect the future competitiveness of states,³⁰ are likely to cause states to focus on the relative gains associated with an agreement. Other negotiations are likely to be characterized by a focus on absolute gains. To analyze how this contextual rule affects states’ bargaining behavior, we can represent the degree to which states focus on absolute or relative gains in a particular negotiation using a general term, α . This parameter captures the weight states place on absolute gains in any given negotiation, and $(1 - \alpha)$ captures the weight they place on relative gains, with α taking on any value between 0 and 1. The more states focus on absolute (rather than relative) gains, the greater is the value of α . If states focus purely on absolute gains, then $\alpha = 1$. If states focus purely on relative gains, then $\alpha = 0$. A focus on both falls in between.

To understand how the absolute/relative gains context of a negotiation affects states’ bargaining interactions, consider a very simple negotiation

²⁹ Waltz 1979; Mearsheimer 2001.

³⁰ Powell 1991.

between two states. The states have different levels of bargaining power, as defined by the value of their BATNAs, and are bargaining over some policy space which can be defined on the interval $[0, 1]$. Any agreement along the $[0, 1]$ interval yields an absolute gain of x to the state in the powerful bargaining position (i.e., with the better BATNA) and an absolute gain of $(1 - x)$ to the state in the weaker bargaining position (i.e., with the more costly BATNA).³¹ The relative gain each state receives is the difference between its own gain and the gain of its opponent. The state with greater bargaining power's relative gain is therefore $(x - (1 - x))$ and the weaker state's relative gain is $((1 - x) - x)$. The overall utility that each state derives from a given agreement is the absolute and relative gains payoffs from the agreement, weighted by the degree to which the states focus on these different types of gain in the negotiation at hand. The utility function for the state with greater bargaining power is $[\alpha x + (1 - \alpha)(x - (1 - x))]$, and the utility for the weaker state is $[\alpha(1 - x) + (1 - \alpha)((1 - x) - x)]$.³²

The size and location of the “zone of agreement” – the range of agreements that both states would be willing to accept – is affected by the absolute/relative gains context of the negotiation and states' BATNAs. The way that the zone of agreement is affected in a given negotiation constrains and enables different types of bargaining strategies. Two types of case are possible, and are illustrated graphically in Figures 3.1 and 3.2.

In case 1 (Figure 3.1), both states face alternatives to agreement that do not yield a positive benefit (though, by definition, the state with greater bargaining power's agreement alternative is less costly than the weaker state's). Both the powerful and the weak state therefore place value on reaching a bargaining agreement. Any agreement that yields some utility gain to both states would be preferred by both over the no-agreement alternative. Figure 3.1 represents this graphically, using BATNA payoffs of 0 and -0.2 for the powerful and weak states respectively.

In case 2 (Figure 3.2), the state with greater bargaining power does not place much value on reaching a bargaining agreement. It may have an interest in some agreements that are highly skewed toward its own interests, but its alternative to agreement already yields a positive payoff.

³¹ Note that this example assumes a zero-sum bargain. This is done for simplicity of illustrating this part of the overall argument about structural effects on state bargaining strategies. The same basic argument about absolute/relative gains effects holds, however, in a non-zero-sum setting.

³² This method of calculating utility using a weighting of absolute and relative gains is consistent with other studies of absolute and relative gains (e.g., Snidal 1991).

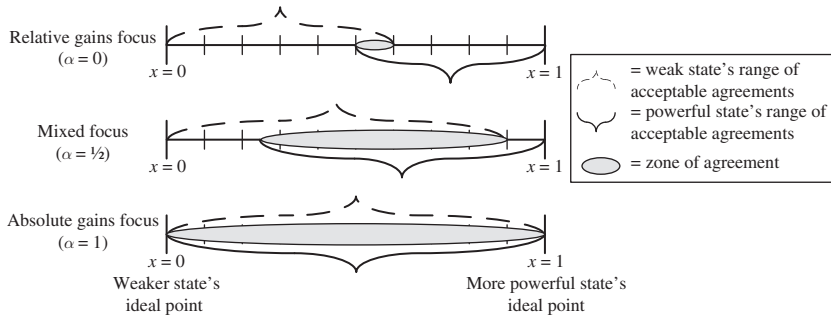


Figure 3.1 The effects of absolute/relative gains on the zone of agreement, case 1: state with greater bargaining power values reaching agreement

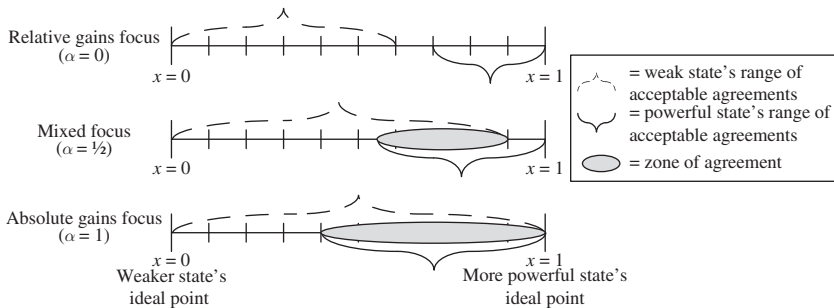


Figure 3.2 The effects of absolute/relative gains on the zone of agreement, case 2: state with greater bargaining power does not value reaching agreement

The weaker state, however, faces a costly BATNA.³³ Figure 3.2 represents this type of negotiation graphically, using BATNA payoffs of .4 and $-.1$ for the powerful and weak states respectively. These BATNA payoffs are chosen solely for illustrative purposes, and their precise values do not impact the conclusions drawn from the analysis.

For each case, the figures plot (1) the range of agreements each state would be willing to accept (as a function of their BATNA³⁴ and the

³³ The case in which the weaker state also has a beneficial BATNA is simply a more extreme version of this second case.

³⁴ Note that a state's BATNA is always defined with reference to its own outlook and approach in that particular negotiation. In an absolute gains setting, having a BATNA of .2 means that the best alternative to agreement for that state yields an absolute payoff of .2. In a relative gains setting, having a BATNA of .2 means that the best alternative to agreement for that state yields an absolute payoff that is .2 greater than that of its bargaining opponent.

absolute/relative gains context of the negotiation), and (2) the resulting zone of agreement. For each of the two cases, an analysis is carried out for three possible absolute/relative gains configurations: (i) the pure relative gains situation ($\alpha = 0$), (ii) a mixed focus situation ($\alpha = \frac{1}{2}$), and (iii) the pure absolute gains situation ($\alpha = 1$). In each of the two figures, these configurations are illustrated in this order from top to bottom. For each case, the areas designated by the curves indicate the range of agreements that each state would be willing to accept, with the solid curve indicating the more powerful state's range, and the dotted curve indicating the weaker state's range. The area where these two curves overlap, which is indicated by the gray oval, represents the zone of agreement.

These two cases (and corresponding figures) illustrate important opportunities and constraints that are created by the absolute/relative gains context of the negotiation. First, absolute gains negotiations are characterized by a significantly larger zone of agreement than are negotiations in a relative gains context. When a bargaining interaction is characterized by a greater focus on absolute gains, the range of agreements each state is willing to accept increases – moving farther and farther from its ideal point. This is illustrated graphically in Figures 3.1 and 3.2 by the fact that the curves for both the powerful and weaker state increase in length, moving increasingly farther from their respective ideal points, as their focus on absolute gains is increased. The result is a larger zone of agreement.

This first result is consistent with the standard assumption in the international cooperation literature that a greater concern for absolute gains makes states more likely to be able to reach a cooperative agreement.³⁵ However, an absolute gains context also creates the opportunity for those agreements to be characterized by a highly one-sided distribution of gains. In an absolute gains context, each state is willing to accept agreements that are closer to the other's ideal point, creating an opportunity for the other state to achieve an agreement that reflects its own interests. Graphically, this can be seen by the fact that the curve representing the set of agreements each state is willing to accept gets closer to the ideal point of the other state at greater values of α .³⁶

³⁵ This cooperation-inducing effect is implicit in neoliberal institutionalist works, as highlighted by the absolute–relative gains debate in the late 1980s and early 1990s. For more on this debate, see Baldwin (1993).

³⁶ Note that while this is true for both states, the state with the better BATNA (i.e., the state with greater bargaining power) is more able to act on these structural opportunities, as

A greater focus on relative gains removes the opportunity for such asymmetric agreements. In a relative gains context, the weak state prefers the no-agreement alternative over agreements that are highly skewed toward its opponent's ideal point. It would be willing to reject one-sided agreements that yield significantly larger payoffs to its opponent than to itself. Absent the use of a strategy that changes the bargaining rules, the only agreements possible in a relative gains context are characterized by a more equal distribution of the benefits between the powerful and the weak states.

It is important to note, however, that the state with greater bargaining power might not always be willing to make the concessions necessary to get the weak state to accept the agreement in a relative gains context. This effect can be seen by comparing Figures 3.1 and 3.2. In the first case (shown in Figure 3.1), the state with greater bargaining power does not have a very beneficial BATNA. It would thus be willing to offer fairly significant concessions to the weak state in order to achieve an agreement that yields itself some gains in return. It prefers an agreement characterized by a fairly equal distribution of benefits over its no-agreement alternative, which is not very beneficial.

However, in the second case (shown in Figure 3.2), the state with greater bargaining power has a beneficial BATNA to fall back on. This causes it to prefer the no-agreement outcome over agreements characterized by a relatively equal distribution of gains. Such symmetric agreements would provide fewer benefits to itself than it would receive from its (beneficial) no-agreement alternative. Greater concessions from the weaker state would be needed to make it prefer an agreement over its BATNA. However, the weaker state is not willing to accept an agreement characterized by a highly unequal distribution of the gains in a relative gains setting. States are therefore likely to be unable to reach an agreement in this type of setting. Whether or not an agreement is possible in a relative gains negotiation therefore depends on the value of the BATNA for the state with greater bargaining power and the resulting value it places on reaching an agreement.

Implications for bargaining strategies and illustrative examples

The absolute/relative gains context of a negotiation affects the range of agreements states are willing to accept. This creates incentives for the

discussed in the next section. For now, it is simply important to note that an absolute gains context creates the opportunity for more asymmetric agreements.

adoption of different types of bargaining strategies. We must analyze those incentives to understand how states' bargaining strategies are likely to be affected. In an absolute gains context, the weaker state cannot make a credible threat to refuse to concede in response to the more powerful state's use of concession-extracting tactics. It actually does prefer agreements in which it makes significant concessions over its costly no-agreement alternative. It would therefore prefer to actually make significant concessions, and receive at least some benefits from agreement, than to face the costly no-agreement outcome. Knowing that the weak state is willing to make significant concessions in order to reach an agreement, the state with greater bargaining power has an incentive to adopt confrontational bargaining strategies to win those concessions. Negotiations characterized by a focus on absolute gains therefore create an incentive for states with greater bargaining power to adopt confrontational bargaining strategies, and weaker states have an incentive to offer concessions in return. This is consistent with the analysis of the effects of the BATNA itself, which implicitly assumed an absolute gains focus.

Stephen Krasner's (1991) analysis of the negotiations over the international telecommunications and satellite regimes provides an illustrative example of this effect. Given their focus on coordination problems, these issue areas were dominated by absolute rather than relative gains concerns. However, they were also characterized by conflicting preferences regarding which coordinated outcome the states wanted to reach. As Krasner shows, the end result of the negotiations was a function of states' relative bargaining power. The United States used its greater bargaining power to extract concessions from the weaker states, imposing telecommunications and satellite regimes that reflected US interests. Because these were absolute gains settings, the weaker states still preferred these asymmetric outcomes over the no-agreement alternative. The gains from coordination – even coordination on an outcome that distributionally favored the United States – were preferable to no coordination at all. The United States could take advantage of the value that the weaker states placed on the absolute gains available from coordination, in and of itself, to push through agreements that were distributionally skewed toward its own interests.

In contrast, the opportunity for such asymmetric agreements does not exist in negotiations characterized by a focus on relative gains. Weaker states can credibly threaten to refuse to concede if the state with greater bargaining power does not offer some concessions to them. In a relative gains context, the weak state actually prefers to face the no-agreement

outcome rather than to have an agreement that is highly skewed toward the interests of the state with greater bargaining power.

Two different cases are possible in this relative gains setting, as illustrated by Figures 3.1 and 3.2. If the state with greater bargaining power has any interest in achieving agreement (Figure 3.1), it must offer concessions to the weaker state in order to do so.³⁷ Weak states would then respond with some concessions in return. Both powerful and weak states are therefore likely to adopt cooperative bargaining strategies in a relative gains negotiation where the state with the better BATNA places value on reaching an agreement. Such mutually cooperative, concession-offering strategies are precisely the types of strategy that are needed for states to be able to reach the zone of agreement in a relative gains context, as illustrated by Figure 3.1.

This type of situation corresponds to the negotiation of the New Strategic Arms Reduction Treaty (New START) by the United States and Russia in 2009–10. This negotiation dealt with issues of state security and defense, and took place between the states with the world's largest nuclear arsenals. Following the logic of realist arguments about the source of relative gains concerns,³⁸ the maintenance of their relative power capabilities is likely to have been a concern for both Russia and the United States. This relative gains concern was evident in the case itself. Russia was highly concerned with protecting its military information in the negotiations dealing with the issue of telemetry encryption, and the United States was concerned with certain methods of counting weapons and launchers that could threaten its “nuclear triad.”³⁹ Both states were also very sensitive to changes in the status quo regarding missile defense systems.⁴⁰

The United States entered the negotiation with the upper hand in its intercontinental nuclear arsenal. Absent any arms reduction agreement, the United States would continue to have greater military capabilities vis-à-vis Russia to fall back on. The United States had 882 deployed intercontinental ballistic missiles (ICBMs), submarine-launched ballistic missiles (SLBMs) and heavy bombers, while Russia had 521; the United

³⁷ This is likely to typically be the case, as it is often assumed that states have at least some interest in agreement if they bothered to come to the bargaining table in the first place. This assumption stems from the standard definition of a “bargaining situation” as one in which states have a joint interest in reaching an agreement, but conflicting interests over the distributional nature of that agreement (Schelling 1960).

³⁸ Waltz 1979; Mearsheimer 1994/1995.

³⁹ This refers to a combination of nuclear submarines, aircraft, and intercontinental ballistic missiles.

⁴⁰ Baker 2010.

States had 1,800 deployed warheads while Russia had 1,537; and the United States had 1,124 launchers as well as deployed and non-deployed heavy bombers, while Russia had 865.⁴¹ The United States therefore had a better BATNA to fall back on.

Despite their concern for relative gains, both states – even the United States, with its greater bargaining power – placed value on reaching an agreement. Not only was the original START agreement scheduled to expire, but an agreement on New START was seen by the newly elected leaders of both states as a way to begin to build a stronger relationship between the United States and Russia, as well as a chance to achieve a foreign policy success that they could show to their domestic audiences.⁴²

The theory predicts that in a negotiation with these characteristics, an agreement would likely be reached, even though the states were focused on relative gains. Moreover, a cooperative outcome was not only possible, but cooperative strategies were likely to be adopted by both Russia and the United States, despite the fact that the United States was in the more powerful bargaining position.

This is what occurred in the New START negotiations. The two states agreed to limit themselves to 1,550 warheads and a total of 800 deployed and non-deployed ICBM launchers, SLBM launchers, and heavy bombers, 700 of which could actually be deployed. They also agreed (1) on a verification regime to ensure compliance with these reduction requirements, (2) on an exchange of telemetry information, and (3) that New START would not place limitations on the testing, development, or deployment of any current or planned US missile defense programs.

For the United States, the aggregate limitations that were agreed upon reflected an important concession because they required significantly greater reductions in arms for the United States. In many cases, Russia would not even have to make an actual reduction in its arms to meet the requirements of the agreement. In addition, reductions of “tactical” nuclear weapons, where Russia outnumbered the United States, were not

⁴¹ This data reflects the number of weapons each state had when New START entered into force (February 5, 2011), and comes from the US State Department, Bureau of Arms Control, Verification and Compliance: “New START Treaty Aggregate Numbers of Strategic Offensive Arms, Fact Sheet.”

⁴² This was particularly true for US President Obama, as US foreign policy faced significant domestic and international criticism due to the ongoing wars in Afghanistan and Iraq that were under way when he was elected. For more on this, see [Baker and Landler \(2010\)](#).

called for by the treaty. The aggregate limitations therefore called for an overall reduction in the military capabilities of the United States relative to Russia.

In return, the verification regime, telemetry exchange, and allowance of the United States to move forward with its planned missile defense system reflected key concessions made by Russia. The verification regime called for on-site inspection procedures that would allow the United States to confirm the actual number of warheads on each Russian ICBM and SLBM – measures that did not exist in the previous START treaty. For the United States, the exchange of unencrypted telemetry information was a key part of this verification regime. Agreeing to this exchange of information was an important concession made by Russia, as it viewed such an exchange as an infringement on its confidential military information.⁴³ Finally, Russia's concession regarding the allowance of missile defense systems was a significant one, given its extreme opposition to the US plan to deploy such a system in eastern Europe. Overall, consistent with the predictions based on the characteristics of this relative gains negotiation, both the United States and Russia offered concessions in order to bring about an agreement on New START.

However, if the negotiating states are focused on relative gains and the state with greater bargaining power *does not* place much value on reaching agreement (Figure 3.2), the result will be quite different. In this type of bargaining setting, the state with greater bargaining power prefers the no-agreement outcome over making concessions to the weaker state. This forces the weaker state into the position of either having to face the no-agreement outcome, or to offer significant concessions to the state with greater bargaining power. Because of its unwillingness to accept the relative loss that would result from making such one-sided concessions, the weaker state prefers the no-agreement outcome. Even though its no-agreement outcome is costly, those costs are less than the cost of a highly asymmetric agreement in a relative gains context. States' strategies on both sides should therefore be characterized by a lack of concession offering, and an agreement will be highly unlikely. These predictions are consistent with the fact that a zone of agreement is not likely to exist in this type of relative gains setting, as illustrated by Figure 3.2.

⁴³ Reuters 2010.

An empirical example of this effect can be seen in the bargaining interaction between the United States and Iran in the 2000s dealing with Iran's pursuit of nuclear technology. This was a clear relative gains issue – the development of Iran's nuclear capabilities would increase its power relative to the United States, which it viewed as a direct threat to its security. The negotiation was also characterized by BATNAs that put Iran in the more powerful bargaining position. Absent an agreement, Iran would continue to develop its nuclear capabilities. This no-agreement alternative was beneficial for Iran, and was, in fact, the outcome that it wanted to achieve. Iran therefore had no interest in reaching a bargaining agreement. For the United States, however, this outcome was very costly. Given the BATNAs of both states, Iran had significant bargaining power in this interaction, while the United States was in the weaker bargaining position.

Based on this distribution of bargaining power and the relative gains focus of the states, the theory predicts that Iran would be unwilling to offer concessions, and no agreement would be reached. Indeed, this was the case for almost a decade. Despite much diplomatic pressure from the United States and others, Iran refused to concede, continuing with its nuclear program. In return, the United States made no concessions such as removing sanctions it had placed on Iran. The United States desired an agreement. However, because of the way the rules were structured in this particular bargaining interaction, it did not have the leverage to be able to obtain such a concession. The result was the lack of an agreement and little to no concessions offered by either side,⁴⁴ just as the theory laid out here predicts.

It is important to note that this result provides the state in the weaker bargaining position – the United States, in this example – with an incentive to change the rules of the negotiation so that Iran would be willing to make concessions. Chapter 4 deals specifically with analyzing these “rule-changing” strategies and incentives. The US effort to place multilateral sanctions on Iran via the UN Security Council to pressure it into discontinuing its nuclear program provides empirical evidence of this effect. However, in the *rule-compliant* phase of the bargaining interaction that preceded that rule change, this absolute/relative gains effect holds.

The illustrative case examples discussed in this section in no way provide a test of this absolute/relative gains argument. However, these

⁴⁴ Calabresi 2008.

Table 3.3. *Summary of rule-compliant hypotheses*

Hypothesis	Empirical prediction
Hypothesis 1	The more differently valued are the issues over which states are bargaining, the more cooperative the bargaining behavior of all states will be.
Hypothesis 2	The more states focus on the absolute gains from an agreement: (i) the less cooperative the bargaining behavior of the state with the better BATNA, and (ii) the more cooperative the bargaining behavior of the state with the more costly BATNA.
Hypothesis 3	In bargaining settings characterized by a focus on relative gains: (i) if state with the better BATNA places value on reaching an agreement, the bargaining states are likely to adopt cooperative bargaining strategies; (ii) if state with the better BATNA places little value on reaching an agreement, the bargaining states are likely to adopt non-cooperative bargaining strategies.

examples do help to illustrate its underlying logic. We can therefore derive the following testable hypotheses:

HYPOTHESIS 2: In bargaining settings characterized by a focus on absolute gains, (i) the bargaining behavior of states with a beneficial BATNA will be less cooperative, and (ii) the bargaining behavior of states with a costly BATNA will be more cooperative, all else constant.

HYPOTHESIS 3: In bargaining settings characterized by a focus on relative gains, (i) if the state with the better BATNA places value on reaching an agreement, all states are likely to adopt cooperative bargaining strategies; (ii) if the state with the better BATNA places little value on reaching an agreement, all states are likely to adopt non-cooperative strategies, all else constant.

Summary of rule-compliant predictions

There is significant variation in the rule-compliant bargaining strategies states can adopt. These strategies vary from confrontational strategies designed to extract concessions from other states to cooperative strategies

characterized by the offering of significant concessions. The incentives and constraints created by the contextual rules of a negotiation exert important effects on the type of strategy a state is likely to adopt. Empirical predictions stemming from the analysis of these effects are summarized in Table 3.3. The next chapter builds on the effects that the bargaining rules have on states' bargaining behavior to analyze when and why states are likely to *change* those rules.

When and why states change the rules

While most states, most of the time, play by the rules in international negotiations, states are often in a strategic setting in which *changing* those rules is a feasible course of action. Some important negotiations do occur in institutionalized settings that constrain states' ability to add or remove issues from the bargaining agenda, and to use coercive threats to change the bargaining rules. Indeed, this is largely the case with the EU and GATT negotiations, as discussed in chapters 5 and 6. Most international bargaining, however, occurs in settings where institutionalized constraints do not prevent states from being able to change the rules to suit their interests. Even in the EU and GATT context, states are sometimes able to engage in some sort of rule-changing behavior.

There is a wide range of strategies available to states through which they could change the bargaining rules. A state could try to change the set of issues being negotiated by offering concessions on a new issue, holding an outside issue hostage, or removing issues from the current agenda. It could also try to alter the set of alternatives to agreement by worsening the BATNA of its bargaining opponents, and thus strengthening its own relative bargaining position. These strategies not only vary in terms of which contextual rule a state changes, but also in the cooperative nature of the way that it does so.

Despite these differences, all rule-changing strategies help a state to achieve the same basic goal – the effective use of any of these strategies makes it more likely that a state will receive concessions from opposing states on at least one issue that it considers important. By adopting a confrontational rule-changing strategy, a state wins these concessions by extracting them from its bargaining opponents. By using a cooperative rule-changing strategy, it wins these concessions by enticing its opponents to make them by offering concessions on an outside issue in return. Using a rule-changing strategy can therefore be highly beneficial in helping a state to fulfill its interests in an international negotiation.

Rule-compliant versus rule-changing strategies

Given the benefits that the use of a rule-changing strategy can yield, it might appear that states would always want to adopt this type of strategy. However, the adoption of a rule-changing strategy is constrained by several factors: (1) institutional characteristics of the bargaining setting itself, (2) a state's own material capabilities, and (3) its incentive to change the bargaining rules. These factors matter because rule-changing strategies rely heavily on the use of threats and promises. States must have both the *capability* and the *incentive* to carry them out for these threats and promises to be credible, and thus effective in changing the rules.¹ The three factors highlighted here affect states' capabilities and incentives to adopt a rule-changing strategy. These effects are discussed in the sections that follow. By engaging in this discussion, a theoretical argument about when and why states are likely to adopt rule-compliant or rule-changing bargaining strategies is constructed, and empirically testable hypotheses are derived.

Factor 1: characteristics of the bargaining setting

Several features of a bargaining setting can limit states' ability to use rule-changing strategies. The first set of characteristics limits a state's ability to worsen its opponent's BATNA. The second set of characteristics limits a state's ability to change the set of issues being negotiated. When a negotiation has both types of characteristics, states will be largely limited to the set of rule-compliant bargaining strategies. When the characteristics of a negotiation do not fit both categories simultaneously, some rule-changing strategies are available to states and the predictions derived in the remainder of this chapter are likely to hold.

Limitations on BATNA-worsening strategies. For a BATNA-worsening threat to be effective, it has to be *credible*. If the target state does not believe that the threatening state will actually carry out the threat, it knows it does not have to worry about the costs that might be imposed if an agreement is not reached. An unwillingness to carry out a BATNA-worsening threat makes that threat not credible, and the BATNA the target state takes into account when negotiating therefore remains the same as it was before the threatening state made its (non-credible) threat.

¹ Schelling 1960; Singer 1963; Most and Starr 1989.

Several characteristics of a negotiation can affect a state's willingness to carry out BATNA-worsening threats. These characteristics include (1) the low-politics nature of the issue area being negotiated, and (2) the institutionalization of the relationship between the negotiating states. First, a negotiation characterized by discussions over low-politics issues is likely to constrain a state's ability to effectively use the threat of force or economic sanctions to worsen its opponent's BATNA, and thus win concessions from it. The cost of using force or sanctions is so high that it is not likely to be outweighed by any benefit that can be gained from concessions in many low-politics issue areas. This creates a strategic incentive for the threatening state not to carry out its threats. Using this type of strategy is therefore not likely to be viewed as credible in low-politics negotiations such as those over many different environmental and economic issues.

Second, negotiations between states that interact enough to have their interactions highly institutionalized are also likely to be ones in which BATNA-worsening threats would not be credible. The use of force or sanctions as well as the threat to go it alone are coercive actions that can have negative effects on the long-term relationship between the negotiating states.² They could even lead to negative reciprocal actions in another important issue area that is a part of their overall cooperative interactions.³ The costs of following through on these threats are therefore likely to outweigh any benefits that might stem from winning concessions in the current negotiation. Coercive, BATNA-worsening strategies are therefore not likely to be credible in highly institutionalized settings like the EU.

Limitations on issue linkage strategies. The use of issue linkage rule-changing strategies can also be constrained by characteristics of the bargaining setting. These characteristics include rules or institutionalized procedures that govern how the bargaining agenda is set. While most international negotiations do not have such procedural rules for setting the bargaining agenda, some do. For example, in the GATT/WTO, a round of negotiations is used to decide the bargaining agenda for the subsequent round of trade negotiations. In the EU's internal decision-making process, the agenda is set by the European Commission (which drafts almost all EU legislation), by the current EU Presidency, or by

² Sebenius 1983; Fisher and Davis 1987.

³ Axelrod and Keohane 1985; McGinnis 1986.

the EU's high representative for foreign policy. In these cases, once the agenda is set, states are constrained in their ability to change it by adding or removing issues during the negotiation process.

Limitations to both. Some negotiations are characterized by factors that limit a state's ability to use both BATNA-worsening strategies and its ability to use issue linkage strategies. In these negotiations, states are limited in their overall ability to use rule-changing strategies.⁴ In most other international negotiations, however, at least one of the different types of rule-changing strategies is likely to be available to the bargaining states. However, states will not *always* adopt such rule-changing strategies in these negotiations. Their ability to do so is not only affected by the characteristics of the bargaining setting, but also by their capabilities and incentives.

Factor 2: states' material capabilities

Even if the use of rule-changing strategies is not constrained by characteristics of the bargaining setting, any rule-changing threat or promise that a state tries to use will not be credible if that state does not have the material resources to actually carry it out. Absent this credibility, these strategies are unlikely to be effective in changing the bargaining rules. An analysis of the capabilities needed to carry out rule-changing threats and promises can therefore provide insights into the real-world variation that exists in states' use of rule-changing strategies.

First, a state sometimes needs significant *military capabilities* to be able to use a particular rule-changing strategy effectively. The threat of force can only be effective in eliciting concessions in a negotiation if the threatening state actually has the ability to inflict physical harm on its bargaining opponent. Otherwise that threat is meaningless. For example, North Korea could not have effectively used the threat of military aggression to win concessions in negotiations with the United States and South Korea in the 2000s if it did not have the military capability to carry out those threats. Recognizing this, North Korea worked to "signal" its capabilities during these negotiations by firing a missile over Japan and conducting nuclear tests. By doing so, it was able to add credibility to

⁴ This is not to say that using rule-changing strategies is impossible. The argument is simply that states are highly *constrained* in their ability to use them, and we are thus unlikely to see them being used under these conditions.

its threat to potentially use force⁵ – a threat that underpinned its overall strategy of “brinksmanship” in its diplomatic relations throughout the 1990s and early 2000s.⁶

Threats to go it alone can also require significant military capabilities in order to be effective. For example, the United States lobbied the UN Security Council in the early 1990s to back an intervention mission to restore democracy in Haiti after its popularly elected president was overthrown by a coup.⁷ However, the United States also made it clear that it was willing to pursue unilateral intervention absent multilateral action. Explicit statements were made by the US president’s special advisor to Haiti in testimony before the House Committee of Foreign Relations in June 1994 indicating a “serious consideration” of unilateral US military action in Haiti.⁸ Unilateral interventions that the United States had taken up throughout the 1980s in states such as Grenada and Panama backed up this threat to “go it alone” by showing both the capability and willingness of the United States to engage in such unilateral action. In July 1994, the UN Security Council passed Resolution 940 supporting a military intervention in Haiti. Scholars who have analyzed this case highlight the clear connection between the US threat to “go it alone” and the passage of the UN resolution⁹ – a threat which could not have been credible (or effective) if the United States did not have the military power to engage in this type of unilateral action.

Even issue linkage strategies sometimes need to be backed up by military capabilities. For example, some issue linkage strategies involve promises of military aid or promises to form a military alliance in exchange for some concession in return. Such a promise would not be credible, and would thus be ineffective, if the offering state does not have the military capabilities to back it up. For example, in the Camp David Accords negotiations in the late 1970s, the United States offered billions of dollars in military aid to Egypt and Israel in exchange for concessions from each side in their dispute over the Sinai peninsula.¹⁰ This promise of military aid could not have been effective in eliciting concessions if the United States did not have more advanced military capabilities from which both Israel and Egypt could benefit – thus making

⁵ For more on the importance of signaling to lend credibility to threats and promises, see Fearon 1997.

⁶ Choe 2009.

⁷ For more on this case, see Malone (1998) and Voeten (2001).

⁸ Backing up the argument made here, Voeten (2001) treats these statements as an indicator of the threat of unilateral action (Voeten 2001: 850).

⁹ Malone 1998; Voeten 2001.

¹⁰ US Department of State 2010.

the aid being offered beneficial enough to outweigh the concessions they were being asked to make. Military power can therefore influence a state's ability to effectively use rule-changing strategies in some international negotiations.

Perhaps even more importantly, a state often needs significant *economic capabilities* to effectively adopt almost any type of rule-changing strategy. The threat of economic sanctions can only be credible if the threatening state has the capability to sustain the cost associated with employing those sanctions. For example, in the negotiations that set the agenda for the GATT's Uruguay Round in the 1980s, the United States threatened to impose economic sanctions on certain developing countries if they did not agree to include issues such as intellectual property rights on the bargaining agenda. Such a threat was credible, in part, because those states knew the United States actually had the economic capability to sustain the cost of following through with those sanctions.¹¹

The threat to go it alone can also require significant economic resources in order to be credible. For example, in the 1980s and 1990s, France and Germany wanted to create a new monetary system among the European states – something the United Kingdom and Italy preferred not to have. However, France and Germany indicated a willingness to “go it alone” and create the system just amongst themselves. The possibility of having the system in place but being left out of it led the United Kingdom and Italy to join France and Germany in the new monetary system. The go-it-alone threat would not have had influence over the United Kingdom and Italy's decision if France and Germany were not important partners in their economic relations.¹²

Issue linkage strategies can also carry with them significant economic costs. For example, many coercive issue linkage strategies involve a threat to cut off some beneficial form of trade on an outside issue in order to win concessions on an issue at hand. A state can only credibly threaten to do so if it has the economic capability to bear the costs to itself that are associated with losing that trade relationship. For example, in 2010, when Japan detained a Chinese ship's captain, China threatened to suspend its exports in high-tech raw materials to Japan if it did not release the Chinese captain. This threat would not have been credible, and thus would have been an ineffective bargaining strategy, if China did not have the economic capability to sustain the loss of the revenue from those exports.

¹¹ For more on this case, see [Watkins 1992](#).

¹² For more on this case, see [Gruber \(2000\)](#) and [Frieden \(2001\)](#).

Even cooperative rule-changing strategies require economic resources. For the promise of a side payment to be credible, the receiving state must believe that the state offering the side payment would actually be able to deliver on its promise. For example, in the Camp David Accords, the United States' offer of military aid to Egypt and Israel amounted to billions of dollars in aid per year.¹³ This offer could only be credible if the United States had the economic resources at hand to be able to bear the cost of making these payments.

Military and economic resources are therefore an important source of power in relation to the adoption of rule-changing strategies. A state needs to have these resources to be able to change the rules of almost any international negotiation.¹⁴

Factor 3: states' incentives to change the negotiation

The bargaining setting and states' material capabilities exert important effects on states' *ability* to adopt rule-changing bargaining strategies. However, even if a state is able to adopt a rule-changing strategy, it does not always have an *incentive* to do so. Analyzing states' incentives to adopt rule-changing bargaining strategies is therefore an important final step in understanding when and why a state is likely to change the rules in an international negotiation.

While there are clearly benefits that a state can derive by changing the contextual rules, adopting a rule-changing strategy is costly. Coercive threats impose direct costs on a state,¹⁵ and also carry with them the potential to harm a state's reputation and detract from the legitimacy of its actions.¹⁶ In addition, after having force or sanctions used against it, a target state might seek to replace the loss of trade (or other beneficial interaction) it had with the coercer by increasing its ties with other states. The coercer's ability to wield power over the target state in the future is therefore potentially decreased.¹⁷ Adopting a rule-changing strategy in a negotiation today can therefore decrease a state's ability to do so in another negotiation tomorrow.

¹³ See [US Department of State 2010, 2011](#).

¹⁴ Recall that this is not the case with rule-compliant strategies, as discussed in Chapter 3. These differing sources of power needed to be able to effectively win concessions when adopting rule-compliant versus rule-changing strategies are discussed in detail in the conclusion.

¹⁵ [Slantchev 2010](#).

¹⁶ [Voeten 2001](#).

¹⁷ [Barach and Lawler 1986](#).

The adoption of cooperative rule-changing strategies is also costly. The offering of side payments carries with it the cost of the side payment itself. Moreover, offering a side payment can also carry with it political and reputational costs, as offering concessions on a new issue can be seen as a signal of weakness,¹⁸ demonstrating a “need” for agreement on the original issue, both to a state’s bargaining opponents as well as to third parties.

Because using a rule-changing strategy is costly, a state would only have an incentive to adopt this type of bargaining strategy if it expected that the new bargaining rules would yield a bargaining advantage over the current rules of the game – an advantage that provided enough benefits to outweigh the costs of using the rule-changing strategy. In other words, only if it could gain significantly more concessions from the new bargaining rules than from the original bargaining rules would we expect a state to have an incentive to adopt a rule-changing strategy.

The analysis presented in the previous chapter provides important insights into understanding the effect that the bargaining rules have on the likelihood that (1) a state’s bargaining opponents will make concessions (or refuse to do so), as well as the likelihood that (2) the state itself will be forced to make concessions. The previous chapter’s analysis can therefore help us to identify the conditions under which a state is likely to have an interest in changing the bargaining rules.

Two characteristics of any given set of bargaining rules are likely to create an incentive for a state to adopt a rule-changing strategy. Both characteristics are likely to yield a non-beneficial outcome if they are not changed, creating an incentive for states to do so. The contextual situations that create such an incentive exist when (1) the issues being negotiated are not differently valued by opposing states, or (2) a state is in a weak bargaining position because it faces a costly BATNA in the negotiation. The effects of these two factors are also mitigated by the absolute/relative gains context of the negotiation.

Case 1: issues not differently valued

First, a state can gain a bargaining advantage over its current bargaining position if it changes the agenda from one that is characterized by issues that are not differently valued to one characterized by issues that are differently valued. As shown in Chapter 3, when bargaining over issues that

¹⁸ Morrow 1992.

are not differently valued, states with opposing positions each care most about winning on the same issue (or issues), regardless of the other issues on the agenda. Such a bargaining structure is likely to lead to the adoption of confrontational strategies by all states and an overall inability to reach a bargaining agreement.

Any state that values reaching an agreement, or even a state that simply values winning concessions on a particular issue (or issues) in that agreement, can improve its bargaining position by changing the bargaining agenda to one that is characterized by issues that are differently valued. Under these new rules, opposing states would place value in winning on different issues, creating a situation in which an exchange of concessions across those differently-valued issues is possible. The result would be an agreement where each state would win on the issue(s) most important to its own interests.

A move from a negotiation without differently valued issues to a negotiation with issues that are differently valued thus changes the negotiation from one in which no state is likely to receive concessions and an agreement is not likely to be reached to a negotiation in which an agreement is likely to be reached and the rule-changing state is likely to receive concessions on at least one issue that it values in the negotiation. When the issue linkage structure is characterized by issues that are not differently valued, states therefore have an incentive to adopt a rule-changing strategy, creating a new issue linkage structure characterized by issues that are differently valued, all else constant.¹⁹

A state can achieve such a move by adopting one of two different types of issue linkage strategies. First, a state could use an "issue addition" strategy and link a new issue to the negotiation. The issue the state chooses to link is likely to be one that creates the possibility for a mutually beneficial exchange of concessions between itself and its bargaining opponents where, before, one did not exist.

Examples of this type of issue linkage strategy are widespread in international bargaining. For instance, in 1982, negotiations among the states of the European Economic Community (EEC) over the renewal of EEC sanctions against Argentina had reached a deadlock. Renewing these sanctions was very important to the interests of the United Kingdom because they provided it with leverage in its dispute with Argentina over the Falkland Islands. However, most other EEC members were reconsidering the sanctions and finding that the costs outweighed the

¹⁹ By "holding all constant" a state's bargaining and material power are also held constant.

benefits. They were therefore not interested in renewing them. In order to overcome the impasse on this issue, the United Kingdom made a concession on an outside issue – agreeing in EU budget negotiations to accept an increase in the EEC’s agricultural price supports (an increase it opposed). Linking the EEC budget issue therefore helped to bring about an agreement regarding the renewal of the sanctions, as concessions were exchanged across the two issues.²⁰ Moreover, the linkage of the sanctions issue to the EEC’s agricultural policy also helped to achieve agreement on the agricultural policy by motivating the United Kingdom to concede in these negotiations, which had been extremely divisive, and on which achieving agreement had been difficult. Because these two issues, *individually*, were important to states on both sides, deadlock arose in the separate negotiations. However, the United Kingdom and other EEC member states’ *relative valuation* of these two issues was different. When they were linked together, a differently valued issue linkage structure was created and a mutually beneficial trade across the two issues could therefore be reached.

A rule-changing state could also use “issue subtraction” to change the bargaining agenda.²¹ When adopting this type of strategy, a state removes the issue causing impasse from the bargaining agenda, allowing the negotiating states to move ahead with an agreement on the other issues on the table. For example, in the multilateral climate change negotiations in Cancún in 2010,²² a decision on the actual level of emission reductions that developed and developing countries would be required to meet was “explicitly put off until the next round of negotiations scheduled for December 2011 in Durban, South Africa.”²³ This issue had been a source of impasse for more than four years in the multilateral climate change negotiations. By removing it from the bargaining agenda in Cancún, the states were able to exchange concessions and reach agreement on other issues that were on the table.²⁴

Overall, we can expect states’ bargaining strategies to exhibit a general pattern characterized by the use of issue linkage strategies when states are faced with a bargaining agenda characterized by issues that are not differently valued.

²⁰ Martin 1992a, 1992b.

²¹ For more on issue subtraction, see Sebenius (1983).

²² This case is described in more detail in the climate change chapter.

²³ Hertsgaard 2011.

²⁴ Ibid.

As illustrated above, all states involved in a negotiation can benefit from a change in the issue linkage structure when the current set of issues on the table is not differently valued. However, states might sometimes be less focused on the absolute gains that are yielded by this change in the issue linkage structure and more focused on the relative gains associated with the agreement that would result from doing so. It is therefore important to consider how the *distribution* of benefits that stem from using an issue linkage rule-changing strategy might change states' incentives to adopt such a strategy in negotiations where states focus on relative gains.

Issue linkage structure and the absolute/relative gains context. Bargaining settings characterized by a focus on absolute gains correspond to the discussion thus far. In an absolute gains context, a state is only concerned with its own gains – the gains it is likely to derive from the current issue linkage structure compared to the gains it is likely to derive from the new issue linkage structure. Other states' gains do not factor into its incentives to adopt a rule-changing strategy. If it will gain from changing the issue linkage structure, it has an incentive to do so. The prediction derived above therefore remains unchanged in negotiations where states focus on absolute gains.

Interestingly, the result is the same if states are worried about relative gains. When relative gains are the main concern, even if absolute gains can be achieved by moving from an issue linkage structure characterized by issues that are not differently valued to one that is, states might not do so. For example, this would be the case if the new issue linkage structure is characterized by differently valued issues, but the degree to which the states value their most important issue varies widely. One state could gain significantly more from winning on issue *X* than the other state could gain from winning on issue *Y*. However, this possibility does not mean that issue linkage will not be an effective strategy if a state wants to use it. It can simply take the distribution of potential gains into account when choosing what issue to link to the negotiation. It can make sure to choose a new issue that is valued about the same by opposing states as the current issue is valued by itself. An equal exchange of concessions across these issues can then take place. The ability to ensure that using an issue linkage strategy results in a set of issues that would yield such an equal exchange is further enhanced because it is almost always possible for monetary side payments to be made to offset any unequal distribution of gains across the exchanged issues.

States can therefore gain in absolute terms by changing to a differently valued issue linkage structure while, at the same time, reaching an agreement that would be acceptable even if the states are concerned about the relative gains it yields.²⁵ An incentive therefore exists to adopt an issue linkage strategy when the current set of issues is not differently valued – regardless of whether states are focused on absolute or relative gains. The following testable hypothesis can therefore be derived. Holding all else constant (including states' bargaining power and material capabilities),

HYPOTHESIS 4: The less differently valued are the issues on the bargaining agenda, the more likely it is that any given state will adopt a rule-changing, issue linkage strategy, all else constant.

Case 2: weak bargaining position

More generally, regardless of the structure of the bargaining agenda, a state can gain from changing the rules of the negotiation if it is in a weaker position than its bargaining opponents (i.e., it has a more costly BATNA). The more costly its BATNA, the more opposing states can exploit its need for agreement to extract concessions from it while offering few (if any) in return. For the weaker state, the original negotiation is one that will yield few benefits beyond its reservation price.

A state that faces a costly BATNA therefore has an incentive to change the rules of the game in order to improve its bargaining position. It can do so in both confrontational and cooperative ways. In both cases, using this rule-changing strategy can help a state facing a costly BATNA to win concessions that it could not get under the original rules of the game.

Using a confrontational rule-changing strategy. First, a state with a costly BATNA could alter the distribution of bargaining power by worsening its opponent's BATNA. Doing so improves its bargaining position relative to that opponent. In the best-case scenario, the state in the weaker bargaining position can worsen the BATNA of its opponent to such a degree that its opponent's BATNA is now more costly than its own. Changing the set of feasible alternatives to agreement in this way shifts

²⁵ Note that even if states care nothing about absolute gains, and will therefore seemingly be indifferent between the no-agreement and agreement options, the outcome characterized by an exchange of concessions would still actually be preferred because the gains from the agreement would provide relative gains to the state vis-à-vis third-party states not involved in the negotiation (Snidal 1991).

the power distribution that governs the negotiation. In the next bargaining phase, governed by this new set of agreement alternatives, the state that originally faced a costly BATNA would now be in a position to win greater concessions than it could have won under the original bargaining rules.

This type of change in the rules can be accomplished by threatening to use force or sanctions against the state with the better BATNA, by threatening to go it alone, or by threatening to impose a cost on some outside issue if concessions are not made. These strategies are all confrontational in nature, designed to extract concessions from the state currently in the position of power.

Before continuing, it is important to note that if this BATNA-worsening strategy is effective, the formerly powerful state will now have an incentive to worsen the newly powerful state's BATNA in order to turn the tables back. These incentives create a potentially never-ending spiral of BATNA-worsening behavior, as each state currently in the weaker bargaining position has an incentive to worsen the other's BATNA. Indeed, as described in Chapter 8, this type of back and forth occurred in negotiations in the Kosovo status process until another actor stepped in and changed the rules of the game in a way that altered the states' incentives to continue the BATNA-worsening spiral. In *most* cases, however, this back and forth is not likely to occur. The level of material capabilities that can be credibly put to use in a given situation will differ between the negotiating states – one state will have more than the other. At some point, the state with greater material capabilities will therefore outlast the state with fewer capabilities in this back and forth, ending up with the better BATNA in the end. The state with fewer usable capabilities has no incentive to continually pay the cost of using a BATNA-altering strategy when it knows it will end up in the weaker position in the end. It therefore loses its incentive to do so in the first place. If it does not adopt a BATNA-worsening strategy, it will end up with the same outcome that would have resulted if it did the back and forth, while at the same time not having to pay the costs associated with doing so. This is what is likely to occur in most cases.

There are numerous examples of BATNA-worsening strategies in real-world international negotiations. For example, North Korea used the threat of force to change the rules governing a negotiation with the United States in the mid-2000s. In 2002, US officials released a declaration stating that North Korea was in violation of an agreement struck in the mid-1990s, which stated that it would cease development of its

nuclear program. Following up on this diplomatic statement, the United States led an international crackdown on banks doing business with North Korea, working to freeze North Korean financial assets. Despite North Korea's demand for an end to this financial freeze, the United States remained firm, unwilling to lift it. North Korea had a costly BATNA – absent an agreement with the United States, its financial assets would remain frozen, imposing significant costs on its economy.

North Korea therefore had an incentive to try to change the rules to better its bargaining position and win its desired concessions. Backed by its nuclear capabilities, it had the *ability* to do so. In October 2006, North Korea set off a nuclear device for the first time, signaling the advancement of its nuclear program and raising the threat that it might use such weapons in the future. This raised the costs to the United States of not reaching a diplomatic agreement with North Korea. US officials responded to this action with a policy shift, agreeing to meet with North Korea to negotiate a possible end to the US-led freeze on North Korean assets.²⁶ Following this softening of the US position, an agreement was reached. The frozen assets were promised back to Pyongyang and the North Korean government announced that it would allow international inspectors to monitor the dismantling of its nuclear program.²⁷

There were certainly other factors at play. However, it is clear that raising the costs of no agreement by increasing the threat stemming from its nuclear program was an important contributing factor in getting the United States to unfreeze North Korea's financial assets – something the United States had before been unwilling to do.

One might raise the question of why the United States did not use its own, greater, military capabilities to turn around and worsen North Korea's BATNA. The reason stems from the need for material capabilities to be able to be *credibly* used as leverage in a given bargaining interaction. In this case, the negotiations took place in the wake of the increasingly opposed war the United States was pursuing in Iraq. Threatening to engage in another military conflict at the time would not have been credible. The United States would not be willing to follow through on such a threat, as the cost of doing so would be greater than the cost of conceding and unfreezing North Korea's financial assets. Economic sanctions were also not likely to be effective because the United States was not engaged

²⁶ For more on this case, see [Choe 2009](#); [Sevastopulo 2007](#); [Song 2007](#).

²⁷ While North Korea did later renege on this concession offer ([Choe 2009](#)), the key point of this example is to show how North Korea's BATNA-worsening strategy led to a change in US behavior.

in much trade with North Korea that the United States could cut off to impose significant costs on it. Given that it did not have material capabilities that could credibly or effectively be used to worsen North Korea's BATNA, the United States therefore accepted its own worsened BATNA and moved forward under the new contextual situation. This example therefore also highlights why a back and forth of BATNA-worsening strategies might not occur.

Using a cooperative rule-changing strategy. As a second option, a state facing a costly BATNA can improve its bargaining position by adopting a cooperative issue linkage strategy. Instead of inducing concessions by coercion, this type of strategy can help a state in a weak bargaining position win concessions in a more cooperative way – concessions that it would not have been able to get under the original bargaining rules. One way it can do so is by offering a concession on a new issue that is very important to the more powerful state's interests (i.e., on which its BATNA is costly because it "wants/needs" agreement on that issue). By doing so, the two states' *overall* BATNAs, which are now based on a new no-agreement outcome associated with not getting an agreement on both issues jointly, become more similar. The state with the formerly more costly BATNA can therefore win more concessions than it could have won when the new issue was not linked.

For example, states with an interest in EU enlargement provided a side payment to economically weaker states (which did not have an interest in enlargement), in return for their support for the enlargement process.²⁸ In particular, they offered to undertake redistributive financial policies that would transfer funds to these economically weaker states. Given their weak economic status, these financial transfers were extremely important to the interests of these states. Absent an agreement, they would be left with significantly less financial support than they could now receive if an agreement was reached. The BATNA they associated with not reaching an agreement became more costly. With an overall desire to now reach an agreement because the issue of financial support had been brought into the discussion, the economically weaker states agreed to support the enlargement process.²⁹

²⁸ Schneider 2011. Carrubba (1997) presents a similar argument in his analysis of EU integration more generally.

²⁹ It is also important to note that it was the economically stronger states that offered the side payment – that is, they had the material capabilities to make this offer credible, and to see it through.

Overall, the weakness that stems from having a costly BATNA provides a state with the incentive to change the bargaining rules. Material capabilities give it the ability to do so. It is when these two factors are *combined* that we are likely to observe a state changing the rules of a given negotiation. We can therefore expect that a general pattern will characterize international negotiations: *all else constant, a state with a costly BATNA is more likely to adopt a rule-changing strategy than a state with a better BATNA (if it has the material capability to do so).*

Weak bargaining position and the absolute/relative gains context.

Before continuing, however, it is important to recognize that the general pattern identified above holds in an absolute gains context. However, the dynamics might differ in a relative gains setting. As discussed in Chapter 3, two relative gains cases are important to examine. In the first case, the state with the better BATNA places value on reaching an agreement. In the second case, it does not.

In a relative gains setting where the state with the better BATNA does place value on reaching an agreement, negotiations are likely to be characterized by a relatively equal exchange of concessions *without any change* to the bargaining rules.³⁰ In negotiations that fit this case, all states – even those with a beneficial BATNA – place value on reaching an agreement. However, even though reaching an agreement is valued, bargaining in a relative gains setting causes the state with the more costly BATNA to be willing to reject some potential agreements – particularly those that are very one-sided.³¹ The state in the powerful position must therefore offer this weaker state some concessions if it wants an agreement to be reached. Given that it does have an interest in reaching an agreement in this bargaining context, the state with the better BATNA is willing to do so.³² A state facing a costly BATNA will therefore have no incentive to change the rules of the game in this type of bargaining context. It can win concessions under the original set of bargaining rules.

In contrast, in relative gains negotiations in which the state with the beneficial BATNA *does not* place value on reaching an agreement, the result of bargaining in this context will likely be a lack of concession-offering by both sides, and thus an inability to reach an agreement.³³

³⁰ This claim assumes that the issue linkage structure is held constant.

³¹ As shown in Chapter 3, this will be the case even though its BATNA is costly.

³² See the logic underpinning the derivation of hypothesis 3 in Chapter 3.

³³ This argument stems from the discussion in Chapter 3.

Because an agreement is not likely in such a situation, a state facing a costly BATNA has an incentive to change the rules. It can do so in both ways described above. It could worsen the BATNA of its bargaining opponent by using coercive measures. If its BATNA is worsened enough, the state that originally did not place value on reaching an agreement will now place value on doing so in order to avoid its now costly BATNA. A state could also get its bargaining opponent to place value on reaching an agreement by linking to the negotiation an issue that is very important to that state's interests. If the issue is important enough, that state will now want to reach an agreement in order to secure concessions on the new issue.

Once the state that did not originally place value on reaching an agreement now does place value on doing so, the bargaining context shifts to one that fits the description of the first case. A relatively equal exchange of concessions is likely to result. A state facing a costly BATNA therefore has an incentive to use a rule-changing strategy in this second type of relative gains context in order to move the bargaining process from one that is unlikely to result in an agreement to one that is likely to end with an exchange of concessions.

As this argument shows, the degree to which a state facing a costly BATNA has an incentive to adopt a rule-changing strategy is conditioned on the absolute/relative gains context of the negotiation. Moreover, when a state does have an incentive to change the rules, it can only act on that incentive if it has the material capability to change the rules. It is the *combination* of bargaining weakness (which is conferred by having a costly BATNA) and material capabilities that is likely to lead a state to adopt a rule-changing strategy. The following hypotheses can therefore be derived.

HYPOTHESIS 5: All else constant, in an absolute gains context, a state with a more costly BATNA is more likely to adopt a rule-changing strategy than a state with a better BATNA when it has the material capabilities to do so.

HYPOTHESIS 6: All else constant, in a relative gains setting: (i) when the state with the better BATNA places value on reaching an agreement, no state is likely to adopt a rule-changing strategy; (ii) when the state with the better BATNA does not place value on reaching an agreement, a state facing a more costly BATNA is likely to adopt a rule-changing strategy when it has the material capability to do so.

Variation in rule-changing strategies

The previous sections were dedicated to understanding the conditions under which a state is likely to change the rules of a negotiation. However, there are different ways it can do so. Some of those options are cooperative in nature, while some are confrontational. It is also important to understand the *type* of the rule-changing strategy a state is likely to choose.

As discussed throughout this chapter, any rule-changing strategy a state chooses to adopt has to be credible in order to be effective. This credibility can be affected by the constraints created by a given bargaining setting, as well as a state's own material power and interests. The credibility of rule-changing strategies is also affected by the relationship between the negotiating parties. Different relationships between negotiating states are likely to foster the adoption of different types of rule-changing strategies.

The degree of economic interdependence that characterizes the relationship between the negotiating states should therefore be a key factor influencing the type of rule-changing strategy a state adopts.³⁴ The material benefits that stem from economic exchange with another state can be identified and measured by states, as can the costs associated with losing that beneficial relationship. A state is therefore likely to take these costs and benefits into consideration when choosing a rule-changing strategy.³⁵

Negotiations between interdependent states

States seeking to change the rules when bargaining against states with whom they have close economic ties are likely to turn to cooperative, rather than confrontational, rule-changing strategies. The threats that underpin confrontational rule-changing strategies are not likely to be credible, while the promises that underpin cooperative rule-changing strategies are. Cooperative rule-changing strategies can therefore be used more effectively than confrontational ones among interdependent states.

³⁴ The existence of economic interdependence means that both states benefit from their economic relationship. Each state is dependent on the other, either for the monetary return on outward trade and financial flows, or for the inward flow of goods and investment, that they provide (Keohane and Nye 1977).

³⁵ This does not mean that this is the *only* relevant factor driving their choice of rule-changing strategies. The argument being presented is simply that economic interdependence is likely to exert an important effect on the cooperative nature of the rule-changing strategies states adopt.

Confrontational rule-changing strategies are not likely to be effective when used in negotiations among states that are economically interdependent because those states are unlikely to have an incentive to carry out the coercive threats being made. Using coercive measures against an interdependent partner is costly. Using force or sanctions against an important trade and investment partner will not only harm the economy of the target state, but will also have costly repercussions for states engaged in a high degree of economic interactions with that state.³⁶ This includes the state adopting the coercive measures. If state A uses force against a trading partner, B, state B is not only likely to be less able to purchase goods from other states (including state A), but it is also likely to explicitly cut off trade relations with state A, with whom it is now engaged in conflict. Similarly, economic sanctions directly cut off beneficial trading relationships between the states involved – often precisely in the sectors in which their economic interactions are founded. Using coercive measures against an interdependent partner is therefore likely to be quite costly.

The costs associated with *actually using* coercion against an interdependent partner constrain the ability of states to adopt rule-changing strategies that are characterized by the *threat* to do so. A threat must be credible to be effective in changing the rules. The benefits of the concessions being demanded in the negotiation at hand must therefore outweigh the costs of using force or sanctions for such credibility to exist. Because these costs are very high for states that are interdependent, they are not likely to be outweighed by the benefits of receiving concessions in the negotiation at hand. Confrontational threats are therefore not likely to be effective when used against an interdependent partner.

In contrast, cooperative rule-changing strategies, characterized by a promise of concessions on an outside issue in return for concessions in the negotiation at hand, can be effectively used to change the rules in negotiations among interdependent states. Interdependent relationships provide an array of various beneficial interactions in a variety of issue areas. If a state does not follow through with cooperative actions that

³⁶ For example, see the arguments of Polachek (1978); Domke (1988); Mansfield (1994); Oneal et al. (1996); and Russett and Oneal (2001). There is a debate regarding whether or not interdependence makes conflict more or less likely. The argument being presented here does not weigh in on this debate. It merely builds on the part of the discussion arguing that using force and/or sanctions against an interdependent state comes with costs. It is therefore only the claim that these costs exist that is used to back up the argument presented here. Whether or not the existence of these costs actually makes the use of force and/or sanctions less likely is a different question.

are expected of it on one issue, that state can anticipate that its partner will punish it by defecting in another cooperative interaction in which they are engaged. Costs are therefore associated with defecting in the first place. Because there is a wide array of issues on which reciprocity can be applied, defection in any single interaction can be prevented.³⁷

The expectation of reciprocity can therefore be used to get a state that promised concessions as a part of its rule-changing strategy to actually make those concessions when the time comes. The promise can be credible, and thus effective, because a state's bargaining opponents expect that it will actually be carried out. The cost of the punishment that can be inflicted in other issue areas can outweigh the benefits a state might feel from reneging on its promise. A state's bargaining opponents can therefore offer the concessions being requested in the negotiation at hand, knowing that they will be compensated on the promised issue in return.

We are therefore likely to observe interdependent states using cooperative (rather than confrontational) rule-changing strategies. Consider the negotiations between the United States and Mexico in the mid-1990s. The New River that flows through Mexico and the United States was tainted by significant pollution from Mexico at the time. This pollution was carried north by the river to the United States and eventually to California's Salton Sea. The New River was considered one of the dirtiest rivers in North America, and the United States and Mexico were involved in intense discussions to solve this pollution problem.³⁸ Mexico was in the stronger bargaining position because it was the United States that had to deal with the bulk of the pollution coming from the New River. Mexico therefore had little incentive to agree to bear the cost of cleaning up the river. If the United States wanted to win concessions from Mexico and get it to adopt the costly measures necessary to reduce its pollution runoff, the United States had to change the rules of the game.

The United States clearly had greater military and economic capabilities than Mexico. It therefore had the ability to use the threat of force, economic sanctions, or some other coercive measure to force Mexico's hand in this negotiation. However, their relationship was characterized by a fairly high level of interdependence. The North American Free Trade Agreement (NAFTA) had just been completed – an institution in which both Mexico and the United States were key members. Both the United

³⁷ Axelrod and Keohane 1985; McGinnis 1986.

³⁸ The international legal community had accepted the "polluter pays principle," according to which Mexico was responsible for cleaning up the New River. However, scholars have shown that the polluter has an incentive to reject this principle (LeMarquand 1977).

States and Mexico were heavily engaged in a mutually beneficial trading relationship within NAFTA, and the negotiations on the New River clean-up were even being conducted within NAFTA bodies. Using such coercive threats in order to win concessions on a water pollution issue would not have been credible in this situation.

Instead, we would expect the United States to try to change the rules by offering a side payment to Mexico. This is what happened in this case.³⁹ Even though the United States had greater capabilities and was not responsible for the bulk of the pollution in the New River, it offered to help pay for a share of the renovation and repairs to sewage pipes and treatment facilities if Mexico agreed to take action regarding the pollution problem.⁴⁰ It changed the game in a cooperative way by offering a monetary side payment to Mexico in exchange for Mexico's agreement to work to clean up the river.

Negotiations between non-interdependent states

In contrast to the rule-changing strategies we would expect interdependent states to adopt, states seeking to change the rules of a negotiation when bargaining against states with which they have few beneficial interactions are likely to turn to confrontational rather than cooperative rule-changing strategies. The promises that underpin a cooperative rule-changing strategy are not likely to be credible, while the coercive threats that underpin confrontational strategies can be.

First, there are real costs to a state if it follows through with a promise of concessions on some outside issue. For a state's promise of concessions to be credibly offered, the cost of actually making those concessions would have to be outweighed by the costs the opposing state can impose if the promise is not kept. Only under these conditions would an offering state have an incentive to actually carry out the promise. However, when states are not engaged in many beneficial interactions, there are few ways that reciprocity can be used to get a state to keep its promise. Few benefits will be felt if it sees its promise through, and significant costs will not be felt if it reneges on its promise. The incentive to carry out a promise is simply not there. Opposing states will therefore not offer the concessions being requested in the negotiation at hand because they know they will not get the promised concessions in return. A cooperative

³⁹ Dinar 2006.

⁴⁰ Environmental Protection Agency of the United States 2011.

rule-changing strategy is not likely to be effective in negotiations among non-interdependent states, and is unlikely to be used as a strategy when a state wants to change the bargaining rules.

In contrast, coercive threats can be effective bargaining strategies in negotiations among non-interdependent states. The costs that would stem from using sanctions or force, and harming the economy of the target state, would have few economic repercussions for a state that is not engaged in a significant degree of economic exchange with its target. The costs of actually carrying out such actions are significantly lower than they would be if the states were interdependent. At the same time these coercive actions provide the benefit of winning concessions in the negotiation at hand. The threat to use these coercive measures can therefore be viewed as a potentially credible one.

Consider the dispute between Iran and the United States (and its allies) over Iran's pursuit of nuclear technology in the 2000s. This negotiation involved states that were not highly interdependent, and Iran sat in the stronger bargaining position. Absent an agreement by Iran to halt its pursuit of nuclear technology, the status quo characterized by Iran's further development of its nuclear capabilities would continue. This no-agreement outcome was very costly for the United States and its allies, whose security was considered to be threatened by such developments. At the same time, not reaching an agreement was actually beneficial for Iran. Iran therefore had no incentive to make concessions. Consistent with this negative incentive, it did not do so.

The United States therefore had an incentive to change the rules of the game to try to win concessions from Iran. In this case, where little interdependence existed between the states on the two sides, we would expect that the United States would be likely to use a confrontational bargaining strategy to do so. Indeed, this is what happened. To pressure Iran, the United States threatened it with multilateral economic sanctions if it did not give in. Demonstrating that this threat was credible, the United States worked through the UN Security Council to try to get these multilateral sanctions imposed. It eventually succeeded in doing so. These sanctions added a cost to Iran's continuation of its nuclear program, worsening its BATNA. The US threat and imposition of economic sanctions – a confrontational rule-changing strategy – is consistent with the prediction based on the overall lack of interdependence between the negotiating states.

Overall, this argument about how the interdependence of states affects the cooperative/confrontational nature of the rule-changing strategies states adopt leads to the following testable hypothesis:

HYPOTHESIS 7: (i) *The more interdependent the states involved in a negotiation, the more likely it is that a state adopting a rule-changing strategy will choose one that is cooperative in nature.* (ii) *The less interdependent the negotiating states, the more likely it is that a state adopting a rule-changing strategy will choose one that is confrontational in nature.*

Summary of rule-changing predictions

Drawing on the argument presented in this chapter, we can begin to understand when and why certain states choose to comply with the rules

Table 4.1. *Summary of rule-changing hypotheses*

Hypothesis	Empirical prediction
Hypothesis 4	The less differently valued are the issues on the bargaining agenda, the more likely it is that any given state will adopt a rule-changing, issue linkage strategy.
Hypothesis 5	In an absolute gains context, a state with a more costly BATNA is more likely to adopt a rule-changing strategy than a state with a better BATNA, when it has the material capabilities to do so.
Hypothesis 6	In bargaining settings characterized by a focus on relative gains: <ul style="list-style-type: none"> (i) when the state with the better BATNA <i>does not</i> place value on reaching an agreement, a state facing a costly BATNA is more likely to adopt a rule-changing strategy when it has the material capability to do so; (ii) when the state with the better BATNA <i>does</i> place value on reaching an agreement, no state is likely to adopt a rule-changing strategy.
Hypothesis 7	<ul style="list-style-type: none"> (i) The more interdependent the states involved in a negotiation, the more likely it is that a state adopting a rule-changing strategy will choose one that is cooperative in nature. (ii) The less interdependent the negotiating states, the more likely it is that a state adopting a rule-changing strategy will choose one that is confrontational in nature.

governing a particular negotiation and when and why they might choose to change those rules. We can also understand the cooperative nature of the rule-changing strategy they will adopt when doing so. Empirical predictions regarding these effects were derived, and are summarized in Table 4.1. Combined with the argument from the previous chapter, we can now test a wide range of generalizable hypotheses regarding the bargaining strategies we expect states to adopt under different conditions. The remainder of the book is dedicated to carrying out such an empirical analysis.

Research design and empirical tests

In the first part of the book, an argument was introduced to explain when, why, and how states are likely to play by the rules or change them when engaged in a bargaining interaction. This second part of the book tests this argument across a wide range of different international negotiations.

Chapters 5 and 6 analyze negotiations in which states are constrained in their ability to use rule-changing strategies, and must therefore adopt largely rule-compliant bargaining behavior. Chapter 5 analyzes bargaining in the decision-making process of the EU. Chapter 6 analyzes multilateral trade negotiations in the GATT/WTO. In both cases, the agenda-setting procedure of these institutions limits states' ability to use issue linkage rule-changing strategies. Moreover, the institutionalized nature of the relations among the EU states and the low-politics nature of trade negotiations make coercive rule-changing strategies unlikely to be credible, and thus ineffective bargaining strategies in these negotiations. In these two sets of negotiations, hypotheses 1 through 3 can therefore be tested – analyzing how states play by the rules that govern negotiations in these institutions.

Chapters 7 and 8 then analyze bargaining in two settings in which rule-changing strategies were readily available to states. Chapter 7 analyzes bargaining in multilateral climate change negotiations, where issue linkage strategies could be used. Chapter 8 analyzes the negotiations that took place in the Kosovo status process from 2005 to 2008 – negotiations in which both cooperative and coercive rule-changing strategies were available to states. Hypotheses 4 through 7 can therefore be tested – analyzing when and why states are likely to adopt rule-changing strategies in these two sets of negotiations and the cooperative nature of the strategy they are likely to adopt when doing so.

Each individual chapter has its own research design and empirical test, constructed to deal with alternative explanations and contextual factors

unique to each of the bargaining settings they analyze. Together, these empirical chapters provide support for the argument and empirical predictions regarding variation in states' rule-compliant and rule-changing bargaining strategies, demonstrating the predicted effects at work in a broad range of negotiations.

Playing by the rules in European Union negotiations

The European Union (EU) is arguably the site of some of the most frequent bargaining interactions among states in the international system today. Intergovernmental bargaining among its member states is a core component of the EU's decision-making process and takes place on an everyday basis among state representatives at a variety of different levels – from issue-specific policy experts, to ambassadors, to government ministers.¹ These negotiations also cover a wide variety of important issue areas – from trade and environmental policy to the coordination of military and civilian foreign policy missions. Some even touch on issues of internal security, such as those dealing with the coordination of border control and immigration policies, and cooperation in police and judicial affairs. The end result of all this bargaining is the creation of hundreds of new international agreements each year, covering a broad spectrum of issues.

Across these multiple bargaining interactions, the strategies adopted by the EU member states vary widely – from state to state and negotiation to negotiation. In the past, scholars often argued that negotiations in the EU are (almost always) characterized by “cooperative” behavior.² More recent work, however, highlights the fact that different bargaining interactions in the EU are characterized by a wide variety of different bargaining strategies – both cooperative and confrontational – and takes steps to explain that variation.³

¹ Specifically, bargaining among the EU member states in the Council of the European Union (also Council of Ministers) and its preparatory bodies – the Political and Security Committee, Committee of Permanent Representatives (COREPER) I and II, and the issue-specific working groups – is what is referred to here.

² For example, [Lewis \(1998\)](#) provides evidence of cooperative bargaining interactions among the EU states, and [Schalk et al. \(2007\)](#) begin their analysis by assuming that EU bargaining is cooperative in nature.

³ e.g., [Dür and Mateo 2010a, 2010b](#); [McKibben 2010](#). Note, however, that these works use the typology of “soft” to “hard” bargaining, but the general idea underlying each corresponds to the cooperative/confrontational dimension of variation analyzed in this book.

However, even these more nuanced studies overlook another important feature of EU bargaining – the dynamic nature of each individual bargaining process. Some EU negotiations are very short, with an agreement being reached in just a few days. Others can continue for several years and an agreement might still not be in sight.⁴ These longer negotiations are often characterized by changes in the strategies states adopted over the course of the bargaining process. For example, consider the negotiations that took place from 2004 to 2006 over a directive designed to break down barriers to trade in services across the EU member states – the Services Directive. Bargaining interactions over this directive were some of the most divisive and highly politicized in the EU's history.⁵ For years, this bargaining process was characterized by states on both sides digging in their heels and refusing to concede their position. However, the last two months were quite different, characterized by compromise and concessions being offered by states on both sides. Why did states change their strategies? What changed in those last few months that made them suddenly willing to compromise?

Most studies of EU bargaining cannot address these questions because they focus on factors that remain largely constant for each state and within each bargaining process.⁶ These factors include states' relative size or voting power,⁷ the nature of the issue area being discussed,⁸ the decision-rule governing how agreement must be reached,⁹ the complexity of the negotiation,¹⁰ the transparency of the negotiation,¹¹ and the degree to which the EU member states are socialized.¹² While clearly important in helping to explain variation in states' strategies, these factors remain constant across each bargaining process and therefore cannot

⁴ For example, in the sample of cases included in the Decision-making in the European Union (DEU) dataset (Thomson et al. 2006) alone – one of the few datasets on EU decision-making – cases range from 89 days to over five years.

⁵ Interview with Council Secretariat member, June 12, 2006.

⁶ An important exception to this argument is the analysis of Jupille (2004), who does identify rule-changing behavior in the EU. However, unlike this study, Jupille focuses on procedural rules rather than contextual ones. Changes to these procedural rules clearly occur under very different conditions than the conditions under which the contextual rules discussed here can be changed. The analysis presented here therefore differs from Jupille's, both in the effects stemming from the different rules that are analyzed, as well as in the relation between rule-compliant and rule-changing strategies.

⁷ e.g., Moravcsik 1998; Thomson et al. 2006; Dür and Mateo 2010a, 2010b.

⁸ e.g., McKibben 2010.

⁹ e.g., Elgström and Jönsson 2000.

¹⁰ e.g., Elgström and Jönsson 2000; McKibben 2010.

¹¹ Stasavage 2004; McKibben 2013.

¹² e.g., Lewis 1998.

help to explain the changes in states' strategies that can occur over time within those processes. These changes are important to analyze, as they often move states from bargaining impasse toward agreement. Indeed, this was the case with the Services Directive.

The method proposed in this book can help us to better understand EU bargaining by (1) breaking down each bargaining process into its multiple phases, and (2) examining the effects that the contextual rules of the game have on states' bargaining strategies across those different phases. These rules create incentives and constraints that affect the bargaining strategies the EU states are likely to adopt in each phase of that overall bargaining process.

Consider again the Services Directive. The rules of the game clearly changed in the last months of the negotiations among the member states in the Council of the European Union (also known as the Council of Ministers). Before the negotiations ended, the European Parliament, which is a co-legislator with the intergovernmental Council, completed negotiations and voted on this directive – significantly changing the structure of the original proposal in the process. In line with this move by the Parliament, the European Commission (which has the sole right to propose draft legislation in many EU issues areas) released a new proposal for agreement, redefining the principles and rules that would govern the future liberalization process for trade in services. This proposal not only redefined the issues being negotiated, but did so in a way that changed the issue linkage structure from one that was “not differently valued” to one that was. Following this change, states adopted very different strategies in their own intergovernmental bargaining interactions. After the new proposal was presented, their strategies were characterized by concession-offering and exchange, when, before, the states had been unwilling to do so. Multiple factors clearly were at work in addition to this change in the issues being negotiated. However, this particular change still had an important effect across the two phases of the negotiations. Understanding the effects of the contextual rules of the game, and comparing those effects across different bargaining processes – as well as across the different phases of each bargaining process – can therefore help us to better understand the dynamics of intergovernmental bargaining in the EU's internal decision-making process.

The goal of this chapter is to analyze these effects. The analysis is based on 146 interviews with political elites in the EU, conducted with ambassadors, deputy ambassadors, and other state representatives directly involved in the negotiations among the member states in the

EU's internal decision-making process. The interviewees include representatives from twenty-five of the twenty-seven EU member states,¹³ and multiple representatives from each state were interviewed whenever possible. These interviews also span the various EU intergovernmental institutions, covering the full gamut of issue areas in which the EU has competence. The institutions from which state representatives were interviewed are (1) the Political and Security Committee (PSC), (2) the Committee of Permanent Representatives (COREPER) I and II, and (3) the various issue-specific preparatory working groups below the more political, COREPER level. The PSC deals with EU foreign policy issues, and almost all other issues of EU competence are covered by COREPER I and II and their working groups. While decisions are formally taken at the ministerial level above these preparatory committees, analyses of EU decision-making show that the large majority of "real" negotiating happens in these preparatory committees,¹⁴ allowing these interviews to highlight the key dynamics of the bargaining process.

The interviews that were conducted included questions about general patterns of state bargaining interactions in these institutions, as well as questions about the interests and strategies adopted by each state across a broad sample of specific negotiations.¹⁵ The information derived from these interviews was used to construct a dataset coding the contextual rules of the game and the resulting bargaining behavior. Thirteen different dossiers are included in the analysis, for which there was a total of twenty-three different bargaining phases.

The first part of the chapter uses this original dataset to statistically test hypotheses 1 through 3. The second part of the chapter lays out a detailed

¹³ There were either twenty-five or twenty-seven member states at the time of the negotiations analyzed here. Where possible, Commission and Council Secretariat officials who took part in these negotiations were also interviewed. These interviews were conducted from 2005 to 2007, as well as in 2010. The two states not covered are Malta and Spain, so the sample includes a wide range of states, both large and small, old and new.

¹⁴ Lewis 1998; Hayes-Renshaw, Van Aken, and Wallace 2006.

¹⁵ These negotiations include a directive designed to liberalize trade in services across the EU; a directive for the Regulation, Evaluation, and Authorization of Chemicals (REACH); the 2007–13 Financial Perspective defining the EU budget for the upcoming years; an agreement designed to criminalize racist and xenophobic behavior; two decisions focused on the limitation of fluorinated gases in EU industries; a directive designed to require battery recycling by all EU member states; a negotiation over the EU funds for scientific research that would be laid out for the next several years, and another focused on the funding for nuclear research, specifically; and negotiations over sending EU missions to Georgia, Kosovo, and Somalia, and a naval mission off the coast of Somalia.

analysis of the Services Directive negotiations, and compares the dynamics of these negotiations to the negotiations over the Financial Perspective 2007–2013. Together, these empirical analyses add to our understanding of the patterns and dynamics of bargaining behavior that exist in these real-world international negotiations.

Background on EU decision-making

One of the most important institutions involved in the EU's decision-making process is the Council of Ministers and its preparatory committees. Within the Council structure, intergovernmental bargaining takes place as representatives from the government of each member state negotiate over potential draft legislation. The bargaining interactions among the member state representatives within this institution are the focus of the analysis in this chapter. In conducting this analysis, however, it is important to recognize that these negotiations are embedded in a complex, overarching process of EU decision-making. The role that the Council plays in the overall EU decision-making process varies across issue areas. It is therefore important to show that, regardless of the institutional context in which they are embedded, the rules governing these intergovernmental bargaining interactions affect the EU states' strategies in consistent ways.¹⁶

One major characteristic of EU decision-making is the variation in the co-legislative role that the European Parliament shares with the intergovernmental Council of Ministers. At the time of the negotiations analyzed in this chapter, three main decision-making procedures existed in the EU. Most issue areas in the EU are governed by the "co-decision" decision-making procedure (now referred to as the "ordinary legislative procedure"), where the European Parliament is an equal co-legislator with the Council. In these cases, the actors within each institution must reach an agreement on a given piece of EU legislation. If the agreements reached in the Parliament and Council do not align, they must then move to a conciliation procedure, whereby representatives of the two institutions work out a compromise amongst themselves. Other issue areas are governed by a consultation procedure. This was the case, for example, in justice and home affairs issues such

¹⁶ As the EU has evolved over time, this decision-making process has changed, and continues to do so. The discussion here highlights the characteristics of the overarching decision-making process in the EU in the mid to late 2000s, when the negotiations analyzed in this chapter took place.

as those designed to harmonize criminal laws and immigration policies across the EU states. According to this procedure, the European Parliament provides input into the Council's intergovernmental bargaining process, but has no formal decision-making power.¹⁷ Finally, some cases are purely intergovernmental in nature. The European Parliament has no input into the intergovernmental bargaining that takes place over these issues. This is the case mainly for negotiations relating to EU foreign policy.¹⁸

A second overarching characteristic of EU decision-making is the dominant role of the European Commission in proposing drafts of potential agreements. The Commission, which is the bureaucratic, executive branch of the EU, has the sole right to propose draft legislation in most areas of EU competence.¹⁹ Even in issue areas in which it does not have the sole right to do so, the Commission is still often the source of proposed legislation.²⁰ The key exception to this procedure is the area of foreign and security policy, where individual member states are the actors that typically put forth proposals for potential EU cooperation.²¹

The analysis presented throughout this chapter includes all three categories of decision-making procedures. This helps to ensure that the contextual rules that should be central factors governing intergovernmental bargaining among the EU member states in the Council actually exert their expected effects, and that they exert these effects regardless of the institutional context within which the negotiations are embedded.²²

¹⁷ This was the case at the time of the negotiations analyzed in this chapter, but the Treaty of [Lisbon \(2009\)](#) altered these procedures, increasing the Parliament's competence in several issue areas.

¹⁸ While the decision-making procedure has moved to co-decision (ordinary legislative procedure) for some of these issue areas, they were subject to the decision rules described above at the time of the negotiations analyzed in this chapter.

¹⁹ For more on the role of the Commission in the EU, see [Hooghe 2002](#); [Pollack 2003](#).

²⁰ For example, in the Justice and Home Affairs case included in this analysis, the Commission put forth the original proposal.

²¹ After 2009, when the Treaty of Lisbon came into effect, the High Representative of the EU was also delegated agenda-setting powers in the area of foreign policy. However, the agenda-setting process for all the negotiations analyzed here preceded the creation of the position of High Representative.

²² This does not mean that the institutional context does not matter. Clearly the Parliament and Commission play a role in affecting the final decision that is reached. By doing so, they can affect the intergovernmental bargaining process in the Council when the state representatives anticipate and respond to the actions of these other institutions. This chapter merely shows that the three rules of the game highlighted throughout the book should affect the EU states' bargaining in the Council, regardless of the institutional decision-making context.

The bargaining rules in the EU context

Across these different institutional decision-making contexts, the member states' bargaining interactions in the Council are affected by variation in (1) the issue linkage structure, (2) the alternatives to agreement available to the negotiating states, which define each state's BATNA, and (3) the degree to which the context of the negotiation leads states to focus on absolute or relative gains. These rules are necessarily abstract concepts to allow for them to be compared across different negotiations. Detailed coding rules of these variables are laid out in the appendix. This section discusses how we can think about these concepts in the specific context of EU decision-making, and how we can do so in a way that allows meaningful comparisons across the different issue areas dealt with by the EU.

Issue linkage structure

The "issue linkage structure" refers to the way states' interests are distributed across the set of issues on the bargaining agenda. When states with opposing interests place most value on winning on different issues in the negotiation, those issues are differently valued. A zone of agreement will therefore exist, with more differently valued issues creating a larger zone of agreement.²³ When opposing states most want to win on the same issue (or issues), the issue linkage structure is characterized by issues that are not differently valued. Less differently valued issues will create a smaller zone of agreement, and can even remove it completely.²⁴ States' positions on each issue and the degree of flexibility they had in that position were analyzed, and these factors were coded based on interviews with state negotiators involved in each bargaining interaction. This interview evidence was corroborated (and gaps filled in) by drawing on working papers from each negotiation which were footnoted to indicate each EU state's position on each article, paragraph, and clause involved. Footnoted working documents were only available for the non-foreign policy negotiations. For the foreign policy negotiations, other types of documents were used to corroborate the interview evidence. Using the documents and interview evidence I gathered, the zone of agreement that existed between the EU states was calculated. The precise steps for how this was done are laid out in the appendix.

²³ Sebenius 1983.

²⁴ Ibid.

To provide an intuitive interpretation of this measure, consider the negotiations over a directive designed to implement EU-wide battery recycling requirements (negotiated from 2004 to 2006). Two main issues were central in these negotiations: (1) what percentage of batteries sold in each state must be recycled, and (2) how long states would have to reach those recycling targets. States' positions and flexibility on these issues fell into two main coalitions. On one side were states such as those in eastern Europe that did not already have programs in place for the collection and recycling of batteries. They therefore did not want high levels of battery collection to be required because they had to start from scratch to build up their recycling programs. At the very least, they did not want the requirements to be instituted in a short time frame. They were therefore somewhat flexible on the issue of recycling requirements, because regardless of the level of collection and recycling that would be required, they would still have to implement a national recycling program. However, they were inflexible on the issue of the time they would have to reach those targets so that they could make sure they would have the time they needed to meet them before they could be sanctioned for lack of compliance.

On the other side were more environmentally oriented states such as Belgium and the Netherlands, which had already instituted national recycling programs. These states placed most importance on achieving relatively high battery recycling targets. Having these requirements instituted at the EU level was not only environmentally important, but was also seen as a signal to their domestic audience that they were not "unfairly" being required to engage in significant recycling efforts while other states did not have to fund such programs. The length of time that states had to reach those targets would not detract from that symbolic effort, and they were flexible on this latter issue.²⁵

The positions and flexibility of the states in these two coalitions therefore largely offset each other, with each coalition placing the greatest value on winning on different issues. We would therefore expect these issues to be differently valued (and thus to result in a zone of agreement which can be measured and compared to the zone of agreement created by other sets of issues in other negotiations).

²⁵ The evidence for this discussion stems from interviews conducted from 2005 to 2006 with members of COREPER I and the environmental working group that were involved in these negotiations. The positions can be corroborated through an examination of Council Document 14228/2/04 Rev.2.

Beneficial BATNA

A second contextual rule that structures EU states' bargaining interactions is defined by the beneficial/costly no-agreement alternative that each state faces. It is coded as a four-category variable based on interview evidence and case research. Interview questions were asked which evaluated whether reaching an agreement (in contrast to remaining at the no-agreement status quo) on the substantive issue at stake was "very important," "important," "somewhat important," or "unimportant" to each state's interests.²⁶ These interviews were backed up with case-specific reasoning, as described in the following example.

In the EU decision-making context, the status quo almost always defines the no-agreement outcome.²⁷ In general, the status quo for any EU negotiation can be thought about in a similar way. These negotiations are undertaken in order to pass EU "legislation" designed to increase cooperation and coordination among the member states – either by extending certain national policies to the EU level, or creating new EU policies.

States that stand to gain from the increased coordination, harmonization, and integration in the particular policy area being discussed are likely to place value on reaching an agreement in that particular bargaining process – preferring such an agreement over remaining at the status quo. Their BATNA is therefore more costly relative to states without such an interest.

In contrast, states facing domestic or political costs associated with the extension or creation of an EU policy would place less value on reaching an agreement. Their BATNA is therefore fairly beneficial relative to states that do want to reach an agreement in that policy area. The beneficial/costly nature of a state's BATNA is thus evaluated based on the degree to which reaching an agreement was important to that state's interests relative to remaining at the current status quo.

The negotiation of an agreement designed to institute criminal law to combat racism and xenophobia at the EU level can illustrate how we can think about the BATNA in the EU context. Several countries, such as Germany, Luxembourg, and France, had already instituted strict laws criminalizing racist and xenophobic behavior. For these countries – especially those that had a "past" from World War II regarding

²⁶ The appendix has a discussion that shows precisely how this was carried out, in practice.

²⁷ Indeed, this is the case with most (though certainly not all) negotiations (Muthoo 1999).

these issues – achieving an EU-wide agreement criminalizing (and thus denouncing) these types of action was extremely important. Not getting such an agreement would look like a failure to take a stand against this type of behavior – something their domestic audience would simply not be willing to accept. They therefore faced a costly BATNA. On the other side were countries such as the United Kingdom, which did not have strict criminal legislation in place against racism and xenophobic behavior, and did not have to deal with such a difficult World War II past. States like the United Kingdom also had very strict freedom of speech rules in place – rules that even allowed for racist and xenophobic speech. These states not only were fine with the status quo, but even wanted to preserve some aspects of it. They therefore had a significantly better BATNA than their counterparts. The coding of states' BATNAs in this case, based on interview evidence, reflects this case-specific intuition.

Absolute/relative gains context

The final contextual rule that structures states' bargaining interactions is defined by the degree to which states focus on the absolute or relative gains they will derive from agreement. A focus on relative gains is often associated with security concerns, and therefore might not appear to be relevant in bargaining among the EU states. However, Robert Powell²⁸ shows that there are important cases in which states are likely to focus on relative gains, despite an absence of immediate threats to state security, in the standard sense of the term. This is likely to occur in economic issue areas, when the benefits that stem from agreement can allow another state to gain an advantage that could be used to harm one's domestic producers and potentially drive them out of business in some future period.²⁹ Across the many negotiations in the EU, states are therefore sometimes likely to focus on relative gains, and sometimes to focus on absolute gains.

The negotiations over the Services Directive provide an important example of an interaction characterized by a relative gains focus. While many economic negotiations in the EU are potentially zero-sum in

²⁸ Powell 1991.

²⁹ This argument is also echoed in Keohane's (1993) summary of the end result of the absolute/relative gains debate in the literature.

nature (with any gain in market share for one state being a loss for the others), they are still not characterized by a focus on relative gains,³⁰ because this increased competition does not necessarily translate into a state's industries being driven out of business. That state could adopt structural adjustments at both the industrial and governmental level, increasing its industries' competitiveness to prevent this. In the case of the Services Directive, however, these structural adjustments were not politically possible in many west European states. Both the government and industries were constrained by lobbies from labor unions, as well as domestic labor laws protecting the role of labor unions in their services industry. They would thus be unable to decrease wages and/or other protections in order to increase the competitiveness of their services sector. A gain for states preferring liberalizing policies in this sector was therefore a direct threat to many west European states' industries. This fits the logic of a non-security negotiation likely to be focused on relative gains.

Most other EU negotiations were characterized by a focus on absolute gains. This is true even for negotiations dealing with the creation of most EU foreign policy missions. While these negotiations clearly involved issues of state security, they did not deal with EU states trying to secure themselves against the other EU states with whom they were negotiating. States were therefore not concerned with relative gains amongst themselves – the key factor driving a relative gains focus in a particular bargaining interaction.

The exception to this absolute gains focus is negotiations involving the possible initiation of missions in Africa. The EU states have limited resources to dedicate to all of their foreign policy missions. The initiation of one mission therefore reduces the resources available for another. For the east European states, missions in Africa (where they had little to no state interests) were often viewed as directly reducing the possibility

³⁰ It is important to note that zero-sum does not imply a focus on relative gains. A simple analysis of utility functions helps to illustrate the difference. In a zero-sum, absolute gains negotiation, two states divide a fixed pie of size 1. Their "absolute gains" utility functions are defined by how much of the pie each state receives for itself: x for state 1 and $(1 - x)$ for state 2. In a zero-sum, relative gains negotiation, states' "relative gains" utility functions are defined by how much more of the pie each state receives: $x - (1 - x)$ for state 1 and $(1 - x) - x$ for state 2. It is therefore possible to have a zero-sum negotiation with a focus on absolute gains. This is the type of setting and focus that characterizes the member states' approach to most negotiations – including the Financial Perspective negotiations discussed in detail later in the chapter.

for a mission in their neighboring states.³¹ This creates a zero-sum game amongst the EU states with interests in different missions, though not *necessarily* a relative gains focus.

However, the EU's eastern European members were concerned with sending missions to the rest of eastern Europe specifically because of the absence of a strong rule of law in many of these countries. This problem was creating spillovers of refugees and crime into their own states. Direct issues of state security were therefore at stake in the negotiations among the states pushing for missions in Africa versus the eastern European states that had an interest in diverting those resources toward eastern Europe. As argued by much work in the IR literature,³² when such security issues are at stake from the outcome of a particular negotiation, this fosters a focus on relative gains. These negotiations are coded accordingly.

Following this logic, whenever a direct security threat or direct threat to a state's industries was at stake, a negotiation is coded as being focused on relative gains. Otherwise, it is considered an absolute gains negotiation.

Statistical analysis: bargaining strategies in the European Union

Just like the rules of the game themselves, the bargaining strategies adopted by the EU states vary widely across different bargaining interactions, and even across time in the same bargaining process. These strategies range from "cooperative strategies," characterized by significant concession-offering, to "confrontational strategies," characterized by concession-extracting tactics. Along this continuum, four categories of bargaining strategies can be empirically identified. These categories are ranked on a scale from confrontational to cooperative, as described in Chapter 2.

The "most confrontational" type of bargaining strategy is characterized by the adoption of concession-extracting tactics. In settings such as the EU, where states are constrained in their ability to change the rules governing their negotiations, concession-extracting strategies are characterized by threats to impose (or the actual imposition of) the (fixed) no-agreement outcome if concessions are not made by opposing states.

³¹ This was clear from most eastern European interviewees – especially those from Hungary and the Baltic states – and the view was recognized by representatives from many western European states, as well (interviews 2010).

³² e.g., Waltz 1979; Lipson 1984; Mearsheimer 1994/1995.

For example, the United Kingdom vetoed an early proposal for agreement in the negotiations over the 2007–13 EU budget structure in order to get states to concede and accept lower EU payouts in specific sectors, as well as to get states with a large agricultural industry to agree to discuss the potential reform of the EU's agricultural policy.³³ In negotiations governed by a (qualified) majority voting rule, no individual state can exert such a veto. In negotiations governed by this type of decision-rule, attempts to form a “blocking coalition” that could collectively exert a block veto represent a similarly confrontational strategy. As an example, a coalition of more protectionist states joined together in the negotiations over a discussion designed to liberalize trade in the services sector to block an agreement until protections for their labor laws were guaranteed in the agreement. Behavior like this is coded in the “highly confrontational” category of bargaining strategies.

Strategies that are only “somewhat confrontational” in nature are strategies that are not characterized by overt attempts to extract concessions, but are not characterized by the offering of concessions either. Concessions might be demanded, or even promised, but no overt action is taken to back up those (cheap-talk) statements. As an example of this type of strategy, in the early days of the negotiations over the Services Directive, EU states with an interest in economic liberalization demanded concessions from their more protectionist opponents, trying to get them to agree to a broad liberalizing principle to govern future trade in services among the EU states. No overt actions were taken to extract these concessions, but the liberal states made very strong demands for them.

“Somewhat cooperative” in nature are strategies in which concessions are offered, but these offers are relatively minor, and do not reflect a willingness to accept the opposing states' positions. They are also often made conditional on the receipt of some concessions in return. For example, in the early days of the Services Directive negotiations described above, some members of the liberal coalition went a bit further than simply demanding concessions from the more protectionist states. They backed up their demands with offers to accept a more limited scope of services that would be covered by the directive, *if* the governing principle was the liberal one they were pushing for. This type of conditional concession offer, which often occurs on more minor issues, represents this less cooperative (albeit not completely confrontational) type of strategy.

³³ Interview with UK representative, June 8, 2007.

The “most cooperative” type of bargaining strategy is characterized by concession offers that reflect a willingness to accept an opposing state’s ideal outcome on one or more of the key issues on the bargaining agenda. These concessions are also often made unconditionally. For example, in the negotiations designed to create a framework for the criminalization of racist and xenophobic acts at the EU level (2001–7), after years of back and forth, states such as France that had national legislation already criminalizing a broad array of racist and xenophobic acts offered a significant degree of concessions on this issue, willingly accepting a very limited definition of criminalization as the basis for the EU-level agreement.³⁴ In addition, most member states in this group offered these concessions in the interest of reaching an agreement, rather than based on *quid pro quo* reasoning. “Because the Union is a Community of values and we felt that fighting racism and xenophobia are necessary common values that we must try to defend, we were supporting the proposal [which included the narrow definition] to get the file to move.”³⁵ The strategies adopted by these member states therefore represent the most cooperative of bargaining strategies – accepting the position of the opposing side on an issue central to the negotiations. Overall, it is this variation in rule-compliant strategies – from confrontational to cooperative – that this chapter seeks to explain in the context of EU bargaining.

Set-up of statistical analysis

This analysis of variation in the EU states’ bargaining strategies covers twenty-three separate bargaining interactions, which took place in the negotiation of thirteen different dossiers from 2004 to 2010. The cases selected for this sample vary widely in the character of the decision-making process governing how an agreement must be reached, and the issue areas covered. The negotiations analyzed include cases governed by all three EU decision-making procedures: (1) a co-decision procedure in which the European Parliament was a co-legislator with the intergovernmental Council,³⁶ (2) a consultation procedure in which the European Parliament was allowed to provide input into the intergovernmental process but had no actual decision-making power, and (3) cases in which the European Parliament had no involvement at all in the process.

³⁴ Interviews with permanent representative, May 7, 2007, and June 8, 2007.

³⁵ Interview with permanent representative, May 7, 2007.

³⁶ This is now referred to as “ordinary legislative procedure.”

Moreover, negotiations are included that deal with environmental policy, trade policy, the allocation of the EU budget, military and civilian foreign policy missions, and the harmonization of criminal law.

The dependent variable, which codes the cooperative nature of the EU states' bargaining strategies, is categorical (consisting of four observable categories of state bargaining behavior), as described above. It is also ordered, with higher categories indicating that a given state's bargaining strategy is more cooperative (and thus less confrontational) in nature. Moreover, the data is "multilevel" in nature: the bargaining strategies of the EU member states (level 1) are clustered together within each individual bargaining interaction/phase (level 2), which are clustered together in the overarching bargaining process dealing with each dossier (level 3). Given the ordered, categorical nature of the dependent variable and the multilevel nature of the data, multilevel ordered logit models³⁷ are used to test the predictions of hypotheses 1 through 3.

In addition to the key variables included in each model, variables are included to control for additional factors that might affect states' choice of strategies in these intergovernmental EU bargaining interactions. Given that any threat of military force among the EU states is not likely to be credible, economic power is the material power that likely matters in these bargaining interactions. A measure of each state's gross domestic product (GDP) is included to control for its level of material power.³⁸ Variables are also included³⁹ to capture whether or not the overall

³⁷ Specifically, a multilevel ordered logit model is used because it helps to control for potential unobserved heterogeneity across the different bargaining phases through the use of random effects, which are included at the level of the bargaining phase ("level 2" in these models) and the level of the overarching bargaining process ("level 3" in these models). These random effects control for heterogeneity that might not be captured through the use of clustered standard errors in the more standard ordered logit model. At the same time, the multilevel modeling technique, which uses random effects, allows for the inclusion and interpretation of independent variables that capture characteristics of the bargaining phase. These independent variables could not be used if fixed effects were used to control for this potential heterogeneity, as they would be too highly correlated with the fixed effects (Gelman and Hill 2007).

³⁸ This variable is logged to account for skewness.

³⁹ The results reported here hold even if controls are included for the publicity/transparency of the negotiation (Stasavage 2004; McKibben 2013) and whether or not a given member state held the presidency at the time of the negotiations (Schalk et al. 2007; Tallberg 2003; Wantjen 2008). The results also hold if the measure of states' bargaining power is dichotomized, instead of using a categorical measure, which implicitly assumes an underlying continuous variable. Finally, the results hold if a variable capturing a lag of states' bargaining strategies is included in place of the "later phase" variable.

decision-making process was governed by a co-decision procedure (thus involving the European Parliament directly in the decision-making process),⁴⁰ whether the decision-rule governing the negotiation was qualified majority or unanimity,⁴¹ whether or not the negotiation took place in a later phase in the process of negotiating a given dossier, and whether or not a state was a “new” member at the time.⁴²

Across the board, the statistical results show that contextual rules play a central role in influencing the dynamics of bargaining among the EU member states. These rules not only affect the EU member states’ bargaining strategies, but they stand out as some of the most important and influential factors affecting the EU’s intergovernmental bargaining process.

Statistical results

The statistical analysis presented in this section tests the predictions laid out in Chapter 3 by analyzing the intergovernmental negotiations of the EU’s Council of Ministers. Focusing on the three contextual rules of the game highlighted throughout the book, it analyzes the effects of (1) the degree to which the issues on the table are (or are not) differently valued, (2) the beneficial nature of a state’s BATNA, and (3) the absolute/relative gains context of the negotiation. The results of the analysis are presented in Table 5.1.

Based on the predictions of hypothesis 1, we would expect states to adopt more cooperative strategies when engaged in negotiations where the issues on the table are more differently valued by the bargaining states. The variable *ISSUE LINKAGE STRUCTURE* should therefore exert a positive effect on the cooperative nature of a state’s bargaining behavior.

The statistical results show the important effect characteristics of the issues being negotiated have on EU states’ bargaining behavior. The positive and statistically significant effect associated with this variable highlights an empirical pattern that is consistent with hypothesis 1. If the differently valued nature of the issues on the table increases by one standard deviation, the odds of observing a state adopting a more cooperative

⁴⁰ Thomson et al. 2006.

⁴¹ McKibben 2013.

⁴² This variable is included to control for potential socialization effects (Lewis 1998).

Table 5.1. *Testing hypotheses 1–3 in EU case*

Issue linkage structure [†]	8.597*
(H1: $\beta > 0$)	(1.318)
Beneficial BATNA	-.882*
(H2: $\beta < 0$)	(.135)
Beneficial BATNA x relative gains	.038
(H3: $\beta = 0$)	(.296)
Relative gains focus	-.698
	(.721)
ln GDP	-.071
	(.073)
Qualified majority voting	1.329
	(.751)
Codecision procedure	.006
	(.680)
New member state	.461
	(.258)
Later phase	.642
	(.352)
Cut1	-5.269
	(1.041)
Cut2	-2.863
	(1.009)
Cut3	.391
	(1.003)
N	588
level 2 units	23
level 3 units	13
log likelihood	-551.295
Variance of level 2 random effects	.605
	(.238)
Variance of level 3 random effects	.000
	(.000)

* Indicates $p < .05$; standard errors are clustered by bargaining interaction.

[†] This coefficient might, at first, appear unreasonably large for an ordered logit model. However, it is large because of the small range of this variable. When exponentiated out in the context of its actual range, the substantive effect is not unreasonably large. This effect is described in the text.

strategy is more than three times as likely as observing it adopt any less cooperative strategy, holding all other variables constant.⁴³ This is quite a significant substantive effect.

Based on the predictions of hypothesis 2, we would expect that when involved in a negotiation characterized by a focus on absolute gains, states will adopt more cooperative bargaining strategies when their no-agreement alternative is fairly costly, and more confrontational strategies when their no-agreement alternative is more beneficial. The BENEFICIAL BATNA variable captures the value of the no-agreement alternative to each state. Moreover, given the presence of a variable interacting this BATNA variable with the relative gains indicator, this variable, by itself, captures the effect of having a better BATNA when bargaining with an absolute gains focus (i.e., when the relative gains variable takes on a value of zero). We should therefore see this variable exert a negative effect on the cooperative nature of a state's bargaining behavior. Given that bargaining power should stem from the beneficial nature of a state's BATNA, this effect should also hold regardless of a state's material power (as captured by its GDP). These bargaining power effects could even wash out the effects of material power in rule-compliant bargaining interactions like those of the EU.

The patterns in the EU member states' bargaining strategies show that their bargaining behavior is affected in important ways by the beneficial/costly nature of their BATNAs, but is not significantly affected by variation in their economic capabilities. These effects are demonstrated by the negative, statistically significant effect associated with the beneficial nature of a state's BATNA, and is further supported by the statistically insignificant effect associated with its GDP. These results support a central argument underpinning this book's approach, which distinguishes between bargaining settings where states can change the rules of the game and negotiations in which they are limited in their ability to do so. When states are limited in their ability to use rule-changing strategies, as they are in EU decision-making, the ability to credibly adopt concession-extracting strategies is greater for states that have a beneficial alternative to agreement to fall back on, but not necessarily for more economically powerful states, which might still face a costly no-agreement alternative in a given negotiation.

⁴³ Specifically, a one standard deviation change in the differently valued nature of the issue linkage structure is associated with a 3.387 times increase in the odds of observing a strategy that is more cooperative than any given category of bargaining strategy, all else constant.

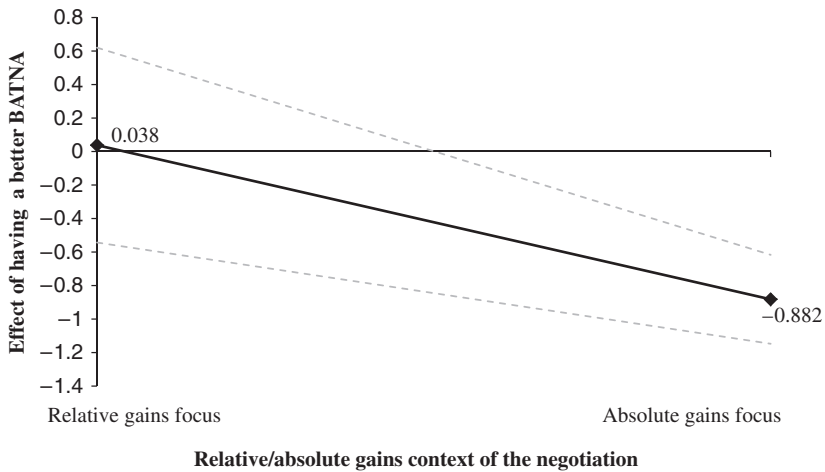
The effects of the bargaining power a state derives from the beneficial nature of its BATNA not only exert statistically significant effects in EU bargaining, but these effects are also substantively significant. If a state's BATNA is more beneficial (increasing by one category), it is almost 2.5 times as likely to adopt a more confrontational strategy, holding all other variables constant.⁴⁴ This is, again, a substantively significant effect.

In contrast to the difference in the strategies we would expect powerful and weak states to adopt when bargaining in an absolute gains setting, hypothesis 3 predicts that there should be no statistically significant difference in these states' behavior when they are in a negotiation characterized by a focus on relative gains and the more powerful states value agreement. As will be described in more detail later in the chapter, the states of the EU almost always place value on reaching an agreement, as the failure to do so can have negative repercussions for the institution as a whole. This is even true in negotiations like that of the Services Directive. While several states did not necessarily want a strong agreement on this dossier in substantive terms, they still valued reaching an agreement in order to keep the EU moving forward. Because the more powerful states are likely to place value on reaching an agreement in the EU setting, we should observe cooperative strategies being adopted by all EU states in negotiations characterized by a focus on relative gains.⁴⁵

The variable BENEFICIAL BATNA X RELATIVE GAINS, which captures the effect of having a better BATNA when in a negotiation characterized by a focus on relative gains, should therefore exert no statistically significant effect on the cooperative nature of the EU states' bargaining strategies. This is indeed the case in the EU negotiations analyzed here. A state with a more beneficial BATNA is no more or less likely to adopt a cooperative, concession-offering strategy than a state facing a costly BATNA. This is illustrated empirically by the statistically insignificant effect associated with the BENEFICIAL BATNA X RELATIVE GAINS interaction term.

⁴⁴ Specifically, for a one unit increase in the variable BENEFICIAL BATNA, the odds of observing a strategy that is more cooperative than any given strategy is only .41 times (i.e., 41 percent) as likely as adopting a strategy in that category or lower. The reciprocal is discussed for ease of intuition and interpretation of this result, all else constant.

⁴⁵ It should be noted that even if EU states do not always value reaching an agreement, hypothesis 3 would still predict no significant difference in the strategies they adopted. They would simply all adopt strategies that are confrontational in nature instead of all adopting cooperative ones.



Dashed lines indicate 95% confidence intervals.

Figure 5.1 Effect of bargaining power in a relative v. absolute gains context in the EU

Figure 5.1 graphically illustrates the differing effects of bargaining power. Specifically, it illustrates the effect associated with being powerful (versus weak), and how that effect is different depending on the degree to which states focus on absolute or relative gains in a given negotiation. First, Figure 5.1 shows that, in negotiations characterized by a focus on relative gains, the cooperative nature of a state's bargaining strategy does not change as its BATNA changes. This is shown by the fact that the 95 percent confidence interval associated with the effect of having a better BATNA overlaps zero. States with a better BATNA are not more or less likely to adopt a cooperative bargaining strategy than their weaker bargaining opponents. The similarity of the EU states' bargaining strategies in these relative gains-focused negotiations is consistent with the logic underpinning hypothesis 3. All states are likely to adopt cooperative bargaining behavior in relative gains negotiations in the EU, and there should thus be no statistically significant difference in the strategies they adopt.⁴⁶

In contrast, Figure 5.1 shows that in absolute gains settings, EU states with a beneficial BATNA are likely to adopt significantly less cooperative

⁴⁶ Recall that it was argued that all states tend to place value on reaching an agreement in the EU. This is why we would expect similarly cooperative behavior from all states. However, the insignificant difference in the bargaining strategies of powerful and weak states in a relative gains setting that is highlighted here would still hold even if the EU states did not place value on reaching an agreement. In that case, they would just be similarly confrontational in nature. In both cases, the bargaining strategies of both powerful and weak states should be similar (i.e., they should not differ in any statistically significant way).

strategies than their weaker opponents. In negotiations characterized by a focus on absolute gains, the effect of having a better BATNA and the 95 percent confidence interval associated with that effect both fall below zero. This indicates that a negative and statistically significant effect is associated with having a more beneficial BATNA in these absolute gains-focused negotiations. Observing such a negative effect means that more powerful states are likely to adopt less cooperative strategies than their weaker opponents. This is consistent with the logic underpinning hypothesis 2. In absolute gains negotiations, powerful EU states can exploit weaker states' lack of concern with the relative distribution of gains from agreement to win more concessions than they give.

This effect is not only interesting and somewhat counter-intuitive, but this analysis shows that it exists in *EU decision-making* – an institutional setting in which state interactions have often been argued to be cooperative in nature,⁴⁷ and concession-extracting strategies are not thought to be the norm. Even in the EU, the incentives created by a focus on absolute gains lead powerful states to extract concessions from weaker states in order to achieve an agreement close to their own bargaining position. Strategic incentives – and the opportunity yielded by the contextual features of states' bargaining interactions – matter in the EU, just as we might expect that they would in other international negotiations. This effect is further highlighted in the discussion of the negotiations over the Financial Perspective 2007–2013 later in the chapter.

Overall, these statistical analyses highlight patterns which demonstrate that the EU states respond to the strategic incentives and constraints created by the contextual rules. These patterns hold across a wide variety of issue areas, as well as across different methods of decision-making. The two case studies that follow complement these statistical tests, highlighting the underlying causal mechanisms that produced these patterns at work in specific cases of EU bargaining.

Illustrative case: Services Directive negotiations

The Services Directive, negotiated from 2004 to 2006, was an agreement designed to liberalize trade in services across the borders of the EU member states. Despite its “low politics” nature, it was one of the most important and controversial pieces of legislation in the history of the EU.⁴⁸ Two opposing coalitions formed in these negotiations. The first

⁴⁷ Lewis 1998; Schalk et al. 2007.

⁴⁸ Interview with member of the Council Secretariat, June 14, 2007.

was a coalition of states pushing for broad and unfettered liberalization of trade in services. This coalition included the majority of east European member states and a handful of west European states.⁴⁹ On the other side were states like France and Denmark. While these states had a strong ability to potentially export services across the EU, they were most concerned with protecting their own service providers from foreign competition.

The negotiations between these two coalitions in the intergovernmental Council proceeded in two phases. The first phase took place in 2005 and focused on the original Commission proposal. In February 2006, the European Parliament reached its own internal agreement on this proposal – an agreement which redefined several key issues on the table. In April 2006, the European Commission presented to the Council a new proposal for agreement that reflected the changes to the issue linkage structure made by the Parliament.

Two phases of negotiations – each defined by different sets of issues, and thus different bargaining rules – can therefore be identified and compared.⁵⁰ This comparison allows for the effects that these different rules had in the different phases of the bargaining process to be analyzed, while holding many other (potentially mitigating) factors constant. These factors include the overall decision-making context in which these negotiations were embedded, the individual state representatives involved in the negotiations, the issue area at stake, the highly politicized nature of the negotiations, and the interests and material power of the states in each coalition. All of these characteristics remained constant across both phases, and therefore cannot explain differences in states' bargaining strategies across those phases.

Services Directive: the issue linkage structure. Across the two phases of the Services Directive negotiations, the issue linkage structure was quite different. In the first phase, the issues were not differently valued,

⁴⁹ The west European states in the liberal coalition were: the United Kingdom, the Netherlands, Spain, Finland, Luxembourg, Ireland, and Italy.

⁵⁰ This approach of breaking up the overall bargaining process into two separate interactions for analysis follows the general approach for analyzing strategic interactions presented by [Lake and Powell \(1999\)](#). New rules of the game create a new game structure, and thus a new interaction to analyze. In the interviews themselves, interviewees consistently referenced the change in issues that occurred between the original negotiations and the negotiations following the new proposal put forward by the European Commission in April 2006. These interviews therefore provide additional evidence that two clear phases of negotiations existed, and were defined by different issue linkage structures (interviews 2005–7).

while in the second phase they were. In its original proposal, the European Commission put two main issues on the table for discussion: (1) the “country of origin” principle, and (2) the scope of services that would be covered by the directive. The main source of controversy in this phase of the negotiations stemmed from the country of origin principle. If agreed, this principle stipulated that “a service provider is subject only to the law of the country in which he is established and Member States may not restrict services from a provider established in another Member State.”⁵¹ In other words, a plumber from Poland working in France would be subject to Polish laws governing the provision of services, rather than to French laws.⁵² This principle already underpinned trade in goods across the borders of the EU states, and the Commission was proposing to extend it to trade in services. The goal was to prevent states from being able to draft laws that could restrict trade from other states, thus ensuring free movement of both goods and services across the EU.

During these original negotiations, states in both coalitions were most concerned with winning on the country of origin principle. For the more economically “liberal” states, the country of origin principle was seen as central to ensuring that service providers could export their services with “legal certainty” to other EU member states. Service providers could be certain that no barriers could be erected to prevent them from working in another state if they were subject to their own state’s laws rather than the laws of the state to which they were exporting their services.⁵³

The problem with this issue, however, was that trade in services involves the movement of *workers* across borders – workers who are subject to minimum wage laws, trade union contracts, and other key labor laws. States in western Europe with extensive labor law standards feared that the country of origin principle would create unfair competition for their own workers by allowing service providers from states with lower labor law requirements to come into their state and compete freely. This would put pressure on west European governments to lower their labor law standards in order to allow their own service providers to remain competitive – laws and standards that were seen as pillars of the “European social model.”

⁵¹ See document 2002/441 COM: 3-4.

⁵² This “Polish plumber” example was cited extensively in arguments against the Services Directive that were highlighted in the media coverage of these negotiations. For examples, see the discussions of [Rettman \(2005\)](#) and [Kubosova \(2006\)](#).

⁵³ Interview with deputy permanent representative from a liberal member state, June 12, 2006.

This potential “threat” that the country of origin principle posed to the European social model created significant opposition to the Services Directive across much of western Europe.⁵⁴ In countries such as Sweden, “Everybody had an opinion about the country of origin principle. The trade unions even organized [demonstrations] against the Services Directive. They were shouting on the streets of Stockholm. The translation is, ‘Save our lives. Save our jobs. Stop the European Services Directive.’ So it was a very heated issue.”⁵⁵

With winning on the country of origin principle being most important to both coalitions, the issues on the table were not differently valued in this phase of the negotiations. We should therefore observe that the EU states adopted confrontational bargaining strategies in this first phase of the negotiations. This prediction should hold regardless of their bargaining power and the absolute/relative gains context of the negotiations because no state has an incentive to offer concessions when the negotiation has an issue linkage structure characterized by issues that are not differently valued.

In the second phase of negotiations, the issue linkage structure was quite different. In this new phase, which began in April 2006, the country of origin principle was no longer on the table. Following the agreement forged in the European Parliament and taken forward by the European Commission in its new proposal, three key issues were now on the table: (1) the “freedom to provide services” principle, (2) the screening of national legislation for compliance with this new principle, and (3) the scope of the directive. The new “freedom to provide services” principle specified that every EU state must give service providers from other EU states free “access to” their market – but those services providers would be subject to the receiving state’s own labor laws. This would allow the “exercise of” those services provisions to be regulated by the receiving state.⁵⁶

For the more protectionist states, the most salient issue was ensuring that this new freedom to provide services principle remained the one that would drive the agreement. Keeping this principle was viewed as central to protecting their social labor market models by preventing a return

⁵⁴ Interviews with deputy permanent representatives from protectionist member states (2005–6).

⁵⁵ Interview with Swedish official, May 25, 2007.

⁵⁶ This distinction between “access to” a state’s market and the “exercise of” the service provision within that market is a key feature of the new freedom to provide services principle.

to the country of origin principle. Keeping the freedom to provide services principle and the ability to regulate foreign service providers in their market was viewed as central to protecting their social labor market models by allowing them to regulate the “exercise of” services in their state. Keeping this principle and preventing a return to the country of origin principle was thus their main interest.

On the other side, the more liberal member states wanted to return to the country of origin principle. However, the freedom to provide services principle combined with a strong screening clause was viewed as a second best option. The “access to” foreign markets was protected under the new principle, and a strong screening clause could ensure that national laws could not be passed to prevent the “exercise of” those services in a way that was designed to discriminate against foreign service providers. Working to get a strong screening clause in the agreement was thus the central focus of the liberal coalition. “If not a perfect substitute for the country of origin principle, at least [it was] something that could make sure that [the directive] would work, and would also produce results in the real world in terms of furthering the internal market.”⁵⁷

This second phase of the negotiation therefore had an issue linkage structure characterized by issues that were differently valued by the EU states. We would therefore expect to observe concession-offering by states in this second phase of the negotiations. However, the *degree* to which each state will do so depends on that state’s bargaining power and the absolute/relative gains context of the negotiation. The degree of cooperation embodied by the strategies adopted by the EU states in this second phase of the negotiations should be affected in important ways by these other factors.

Services Directive: bargaining power, relative gains, and powerful states’ valuation of agreement. The fact that each state would be expected to adopt a more cooperative strategy in the final phase of the negotiations than it did in the original one can be combined with the predictions based on their bargaining power and the relative gains focus of these negotiations to derive expectations about the *precise* nature of the strategies we would expect each state to adopt. As described throughout the chapter, the no-agreement alternative for each of the two coalitions was defined by the status quo – an outcome characterized by barriers

⁵⁷ Interview with a deputy permanent representative from a liberal member state, May 24, 2007.

to trade in services across the EU. The more liberal states were therefore in the weaker bargaining position. For these states, the status quo impeded their ability to export services across the EU, and was therefore quite costly for their competitive services sector. In contrast, the protectionist coalition had significant bargaining power in these negotiations, as the status quo was characterized by barriers protecting these states' services sectors, which were governed by stringent labor law protections.

The negotiations over the Services Directive were also characterized by a focus on relative gains. While most trade negotiations in the EU are likely to have a zero-sum character to them (as any gain in market share for one state is a loss for the others), they are still characterized by a focus on absolute gains. Increased competition, alone, does not translate directly into a state's industries being driven out of business because industries can adapt. However, in the case of the services directive, the structural adjustments that would allow industries to adapt to this increased services sector competition were not politically possible in many west European states. Both the government and industries were constrained by lobbies from labor unions, as well as domestic labor laws that protected the role of these labor unions in the decision-making process. They would thus be unable to implement the structural adjustment policies necessary to maintain the competitiveness of their services sector in the face of competition from states with less stringent labor laws. A gain for the liberal states, moving toward liberalization in this sector, was therefore a direct threat to many west European states' own services industries – creating a focus on relative gains.

Along with the focus on relative gains that characterized the Services Directive negotiations, the final phase of the negotiations was also characterized by a significant value placed on reaching an agreement by all states – those with a costly BATNA, as well as those with a more beneficial BATNA (and thus with greater bargaining power). In mid-2005, popular referendums were held regarding the adoption of the most recent EU Treaty – the “EU Constitution” – which the member states' governments had spent years negotiating. These referendums failed in both France and the Netherlands. Discussions in the media following these failed referendums focused on “whether the EU could work anymore.” In the face of these criticisms and doubts, *all* participants in the Services Directive negotiations recognized the importance of demonstrating that the EU could still “work,” and that the EU member states could still agree on

tough decisions, by coming to an agreement on the Services Directive.⁵⁸ “[Following these referendums], there was political will among all the member states to reach agreement on this high-profile proposal. ... A failure to agree would be noticed as something very negative at a very sensitive point in time when we [had] other problems to cope with in the European Union. It would have sent a bad signal if we had not been able to agree on this directive.”⁵⁹ The argument underpinning hypothesis 3 therefore predicts that the bargaining strategies of all states, regardless of their bargaining power, should be similarly cooperative in nature in the second phase of the Services Directive negotiations.

Services Directive: strategies adopted. Based on the contextual rules governing the Services Directive negotiations, we would expect the following strategies to characterize the EU states’ bargaining behavior: (1) in the first phase of the negotiations, all states’ strategies should be fairly confrontational in nature, and (2) in the final phase, all states’ strategies should be fairly cooperative in nature. This is what happened in these negotiations.

During the first phase of the negotiations, highly confrontational bargaining strategies were adopted by the states in the protectionist coalition as they fought to remove the country of origin principle from the agreement. To accomplish this goal, several of these more protectionist member states began to construct a blocking minority to use as leverage in the bargaining process. In the (qualified) majority decision-making process that governed how an agreement had to be reached in these negotiations, a blocking minority would allow the protectionist states to prevent any agreement from being reached that did not reflect their interests. This strategy was thus aimed at trying to “hold the directive hostage” in order to extract concessions on the country of origin principle.⁶⁰

However, this coalition was not able to rally enough support to be able to effectively block an agreement.⁶¹ Because they could not rely on a blocking minority, the protectionist states shifted their bargaining strategy and began to focus on influencing the decision of the

⁵⁸ This sentiment was reflected even by representatives of France – the state that was arguably the most strongly opposed to the Services Directive (interview with French representative, June 6, 2006).

⁵⁹ Interview with Council Secretariat representative, June 12, 2006.

⁶⁰ Interview with French representative, June 6, 2006.

⁶¹ Interview with deputy permanent representative from a protectionist member state, May 15, 2007.

European Parliament. The protectionist coalition began to delay the intergovernmental negotiations within the Council institutions, “not allowing things to move at all.” At the same time, member states such as France, Germany, and Denmark lobbied key members of the European Parliament to push for an agreement in the Parliament that reflected their own interest in the removal of the country of origin principle.⁶² As one deputy ambassador stated in 2005 during the first phase of the negotiations,

I am working to do that now – that is, to seek a context in the European Parliament to try to further our [national] points of view [on the Services Directive] ... We try to circumvent the inability to get national points across in Council negotiations by trying to get the Parliament to try to adopt our views. That is not always very easy, but then you have the weight of Parliament behind you when you negotiate with the other member states.⁶³

These strategies were all highly confrontational in nature, reflecting an overall strategy designed to extract concessions from the more liberal states.

States in the liberal coalition also adopted fairly confrontational bargaining strategies. The majority of more liberal states did indicate a willingness to concede and accept a more limited scope for the agreement. However, their willingness to make this concession was made conditional on keeping the country of origin principle as the defining principle of the directive. This concession offer was therefore relatively minor in relation to the dossier as a whole, and was explicitly linked to the receipt of a concession that the protectionist states were not willing to make. Concessions by the more liberal states were thus “promised,” but the promise was not carried out – a characteristic of strategies that are, in effect, not very cooperative in nature.

Overall, the bargaining strategies adopted by the EU states in both coalitions were largely confrontational in nature during this early phase of the negotiations. “Member states were looking for problems rather than solutions” and overall, “there were no compromises.”⁶⁴ These

⁶² This strategy was described by multiple different interviewees – including French and Danish representatives, as well as participants involved in the Services Directive negotiations that took place in the European Parliament (interviews 2005–6).

⁶³ Interview with deputy permanent representative from protectionist member state, May 30, 2005.

⁶⁴ Interviews 2006.

strategies are consistent with the fact that the issues in this phase of the bargaining process were not differently valued.

The second phase of negotiations stands in stark contrast to the first. As described by one participant in discussing this second phase of the process, "All member states, without exception, [were] extremely flexible and prepared to compromise."⁶⁵ The liberal states conceded and agreed to accept the freedom to provide services principle as the standard that would govern the liberalization of the services sector among the EU member states. Given the importance the country of origin principle originally had to their interests, accepting that it would not be incorporated into the final agreement was a significant concession on their part.

In return, the protectionist states offered a fairly significant concession, accepting that a screening mechanism could be included in the directive. This mechanism provided the European Commission with broad powers to review national laws and sanction states found to have laws that were not in compliance with the Freedom to Provide Services principle. While this screening mechanism was not as strong as some liberal states would have wanted, it still deviated in a fairly significant way from the ideal outcome of the protectionist member states, many of whom did not want a screening mechanism included in the directive at all. The overall result was an exchange of concessions in this final phase of the negotiation. "We gave a little bit in some parts of the directive that [were] not that important to us, but which [were] important to the other countries. And they did the same. ... It [was] a phase more to give than to take."⁶⁶

Overall, this variation in the states' bargaining strategies is consistent with the predictions of hypotheses 1 and 3, which were derived in Chapter 3. However, because hypotheses 1 and 3 make similar predictions regarding states' strategies in the second phase of the negotiations, it is important to identify the underlying dynamics in order to ensure that both factors were at work in driving states' bargaining behavior. An examination of the case highlights that both factors were, indeed, at play in the second negotiating phase.

The linkage of differently valued issues created a focal point for agreement characterized by a trade-off across those issues, around which the member states converged (as predicted by the logic underpinning hypothesis 1). Moreover, the states recognized that each had to give concessions in order to reach an agreement. The focal point reached could

⁶⁵ Interview with negotiation participant, June 12, 2006.

⁶⁶ Interview with state representative, May 16, 2006.

thus not be characterized by large concessions from one coalition and very minor ones from the other. The fact that both sides recognized this need to offer fairly significant concessions is consistent with the relative gains setting and the argument underpinning hypothesis 3.

In negotiating over the differently valued issues that characterized the second phase, a focal point was highlighted regarding the type of agreement that the states could reach. An agreement could clearly be reached if the more protectionist states could achieve their interests on their most salient issue (the defining principle) and the more liberal states could achieve their interests on their most salient issue (the screening mechanism). This potential trade-off was clear to all member states involved. All state representatives that were interviewed highlighted this trade-off, describing it as an important “balancing element” on which they were able to quickly converge. Indeed, an agreement was reached by the end of May 2006, just weeks after the new proposal had been presented in April, and this agreement reflected the exchange that characterized the focal point created by the linkage of these differently valued issues.

It is important to reiterate that this focal point was characterized by fairly significant concessions made by both sides – even by the protectionist states that had greater bargaining power. It could have been a focal point characterized by an asymmetric exchange of concessions and still be consistent with the issue linkage logic.⁶⁷ However, the concessions that were exchanged had to be fairly significant on both sides in order to bring about an agreement in this relative gains setting. This was clearly the case, as described by all state representatives involved in the negotiations. Despite the fact that they had greater bargaining power, the protectionist states recognized that if they wanted to reach an agreement they had to offer fairly significant concessions in order to do so. This was a key factor that drove them to concede, and accept the screening clause. As a representative from one of the more protectionist states explicitly stated, “The screening clause was ‘the price to pay’ to get an agreement.”⁶⁸

Overall, the dynamics of the Services Directive negotiations highlight behavior consistent with the logic of hypotheses 1 and 3, as well as demonstrating the dynamics underpinning these hypotheses at work. The analysis therefore provides illustrative evidence in support of the

⁶⁷ An asymmetric distribution of concessions in the second phase could still be consistent with the issue linkage part of the argument as long as the strategies adopted by the states were more cooperative than the highly confrontational strategies they adopted in the first phase.

⁶⁸ Interview with deputy permanent representative, June 6, 2006.

argument presented in Chapter 3. However, while the distribution of concessions was fairly symmetric in this relative gains case (once the issues on the table were differently valued), it is important to note that we should observe highly asymmetric concession offers between powerful and weak states in an absolute gains negotiation (as predicted by hypothesis 2). To evaluate the effects of bargaining power in an absolute gains setting, the dynamics of the negotiations over the EU's Financial Perspective 2007–2013 are highlighted in the next section.

Illustrative case: Financial Perspective negotiations

The EU's Financial Perspective 2007–2013 was negotiated for several years, with the defining negotiations taking place in 2005. It was an agreement designed to provide a framework for the EU's budget for the years 2007–13. The outcome of this negotiation would set the priorities for EU spending for this whole time period by (1) defining where the money would come from, and (2) allocating specific amounts of funds to different policy areas, setting ceilings for the yearly budget that could be used to support each policy during the 2007–13 period. It was therefore a very important negotiation both for “net contributors” to the EU budget as well as for states that received significant EU funds in particular policy areas.

In these negotiations, several coalitions of interest formed. The main dividing issue involved the overall size of the budget. “Net contributors” wanted to limit the size of the EU budget in order to lessen the amount that they had to pay into it. The most extreme net contributors – Austria, France, Germany, Sweden, the Netherlands, and the United Kingdom⁶⁹ – wanted to limit the EU budget to 1 percent of EU gross national income (GNI). Other net contributors, such as Finland, Denmark, Spain, and Italy, were less extreme in their desire to limit the overall budget, not setting any specific desired ceiling, though they did want to limit the amount they individually paid in as much as possible. The rest of the states desired a larger EU budget, on a level closer to that suggested by the European Commission in its proposal: 1.24 percent of GNI.

A second source of divergence was over the allocation of “structural and cohesion funds” – EU funds provided to member states for use in

⁶⁹ Indeed, these states even sent a letter to the European Commission stating this position. This letter was titled: “Joint Letter from Mr. Blair, the Prime Minister, and the President of France, the Chancellors of Germany and Austria, and the Prime Ministers of the Netherlands and Sweden,” dated December 15, 2003. This letter is available online. As of 2013, it could be found at http://miha.ef.uni-lj.si/_dokumenti3plus2/191241/Letterofsix.pdf.

programs designed to help develop the poorer regions of their state, thus reducing economic and social disparities across the EU. Overall, states that received significant cohesion funds wanted a large cohesion budget to ensure that they would continue to receive EU support in this area. The main proponents of this position were the “new” east European member states,⁷⁰ as well as Portugal, Greece, and Spain.

A third source of divergence had to do with which states would be eligible to receive these cohesion funds. Denmark, Sweden, the Netherlands, and the United Kingdom were very much against paying cohesion funds to “rich” countries that could afford to implement regional assistance programs at the national level. In their view, cutting funds to these richer states was a way to limit cohesion spending as well as to limit the overall budget (their main goal in the negotiation). States that would potentially lose their cohesion funds if this position was adopted, as well as their allies, were very much against this limitation on cohesion eligibility. The states that most adamantly defended keeping eligibility open to all EU states were Spain, Portugal, Ireland, Finland, Belgium, Germany, Ireland, Cyprus, and Malta.

Other issues were clearly important in these negotiations,⁷¹ including whether or not to incorporate a reform (i.e., decrease of funding) to the EU’s agricultural policy and whether or not to remove the United Kingdom’s “rebate” which it received from its contribution to the EU budget. For purposes of this discussion, however, a focus on these three issues can illustrate the effects regarding the absolute gains setting without over-complicating the discussion of this very complex case.

Financial perspective: bargaining power and absolute gains

While the issue linkage structure played an important role in these negotiations, the effects were similar to those highlighted in the Services Directive discussion. I therefore do not complicate the discussion by adding in these already demonstrated issue linkage effects. The purpose of this second case discussion is its ability to highlight the “absolute gains” part of the argument presented in Chapter 3, complementing the “relative gains” analysis of the Services Directive. In particular, this negotiation was characterized by a significant concern with absolute gains. Each EU

⁷⁰ These member states are labeled “new” because they joined the EU on May 1, 2004, shortly before the main negotiations on this directive began.

⁷¹ Indeed, nine separate issues are included in the coding of this case for the statistical analysis.

member state was concerned with maximizing its own receipt of EU funds and minimizing its payment into the EU as much as possible. In other words, states were not focused on how much they gained or lost relative to other states, but merely were focused on securing the greatest net benefit (or the smallest net contribution) for themselves as possible.

In this absolute gains setting, hypothesis 2 predicts that states with a beneficial BATNA would offer few concessions, and states facing a more costly BATNA would offer significant concessions. The result would be an agreement largely reflecting the interests of the states with greater bargaining power. This is indeed what happened in these negotiations.

The alternative to reaching an agreement on the Financial Perspective, as defined by EU law, was central in defining the bargaining power of the various states in this negotiation. If no agreement was reached, EU law specified that the annual budget would continue on a one-twelfth per year basis until an agreement was reached. The states with the best BATNA in these negotiations were therefore the United Kingdom, Sweden, the Netherlands, and Austria. These states were net contributors, and did not have powerful domestic constituencies that received significant funds from the EU. The alternative to agreement was therefore not very costly for these states.⁷² The weakest states in these negotiations, given this no-agreement outcome, were the states that received a significant amount of cohesion funds – the “new” east European states, in particular. As one east European member state representative described their position,

The worst-case scenario for us, and for the other new members, was if there was no Financial Perspective. Then the annual budget division should have continued on a one-twelfth per year basis. That would have been extremely disadvantageous for all new member states. So everybody was aware of the fact that the new member states were extremely interested in getting the deal done.⁷³

Given this distribution of bargaining power, we would expect the net contributors, which had greater bargaining power, to take advantage of the weaker “cohesion” states’ need for agreement to extract concessions from them. This prediction is reflected in the strategies adopted in these

⁷² Note that the other two member states that were part of the 1 percent coalition had a slightly less beneficial BATNA because, despite their net contributor status, they had important domestic groups that received EU funds: France received significant funds from the EU’s agricultural policy and Germany received significant funds from the EU’s cohesion policy. Their need for agreement was therefore slightly greater than their 1 percent coalition partners.

⁷³ Interview with east European member state representative, May 29, 2006.

negotiations. The negotiations were characterized by the offering of little to no concessions by Austria, the United Kingdom, Sweden and the Netherlands, and by the offering of significant concessions – the largest of concessions – by the east European member states in response.

Financial perspective: strategies adopted

The early negotiations among the EU member states on the Financial Perspective 2007–2013 were characterized, most strikingly, by the United Kingdom's direct veto of a proposal put up for agreement by the Luxembourg Presidency in June 2005. The United Kingdom vetoed the agreement based on two main arguments: (1) that the reform of the EU's common agricultural policy (CAP) was not even an issue in this proposal, and (2) that "richer" member states were eligible for cohesion funds under this proposal, when the United Kingdom felt that they should only be allocated to the poorest member states.⁷⁴

Following the UK veto, several other member states also cast "no" votes against the Luxembourg proposal.⁷⁵ Many of these states – Austria, France, Germany, Sweden, and the Netherlands – cast these "no" votes arguing that the overall budget in the Luxembourg proposal was too large: 1.05 percent of GNI instead of their desired 1 percent. Finland also fell in with this group of states, questioning the "added value" of some of the spending in the proposed Luxembourg budget.⁷⁶ These "no" votes represent the most confrontational rule-compliant bargaining strategies. The adoption of these concession-extracting strategies is consistent with the absolute gains setting and the overall variation in strategies predicted for states with differing levels of bargaining power.

The new east European member states, and states such as Belgium, which had supported a large overall budget and significant expenditure on the EU's cohesion policy, had already offered fairly significant

⁷⁴ As one UK representative described, "We vetoed the deal that was on the table ... mostly because it did not have any perspective on the reform of [cohesion] funds or CAP" (interview with UK representative, June 8, 2007).

⁷⁵ It should be noted that these "no" votes were argued by several representatives as only having been made in response to the prior veto by the UK – that it was not clear that any one of these states would have actually exerted the veto unilaterally (interview with permanent representative, May 7, 2007).

⁷⁶ It is important to note that Spain also cast a "no" vote, arguing for the need for an increase in the cohesion funds (interviews 2006–7). This strategy does deviate from the predictions highlighted here. The trend, however, is consistent with the argument.

concessions by mid-2005. These concessions revolved around two central issues. First, compared to the Commission's original proposal, the proposed agreement for which they expressed support reflected a significantly smaller overall budget than they would have liked (1.05 percent of GNI instead of 1.24 percent of GNI). Second, it also reflected a significantly lower cohesion policy expenditure than they would have liked – ranging from 42,427 to 45,533 million euros⁷⁷ instead of the 47,570–50,960 million range originally proposed by the European Commission.⁷⁸ Despite these substantial cuts, which deviated significantly from the ideal outcome of the new member states and states such as Belgium, their bargaining strategies reflected a willingness to concede and accept this proposed agreement in order to “get the deal done.”⁷⁹

Following the veto of this proposal in mid-2005, Austria, Sweden, the Netherlands, and the United Kingdom still adopted fairly confrontational strategies in the second phase of this negotiation, which took place in December 2005, demanding additional concessions beyond what had been presented in the June proposal. Specifically, they demanded a further decrease in the proposed budget, which was lowered from 1.05 percent of GNI in the June proposal to 1.045 percent of GNI in the final agreement. The United Kingdom also insisted on consideration of the reform of the EU budget, including, most importantly, a reform of the CAP. Adopting slightly less confrontational strategies, the other key “net contributors” – Italy, Finland, Germany, and Denmark – conceded on the overall level of the budget without making significant demands, accepting that the budget would be higher than they might have preferred. Their concession was relatively small, however, given the final numbers that were eventually agreed.

In return, the net contributors received fairly significant concessions from the other member states. Spain, Greece, and Portugal offered concessions on the overall budget numbers, as well as on the level of cohesion funds, but protected their interests in maintaining their own eligibility to receive these funds. In addition, France and Ireland conceded on the EU's common agricultural policy, though the concession was again relatively small. They merely agreed that the CAP would be “reviewed” midway through the 2007–13 financial period, while ensuring that the review had

⁷⁷ See Council document 10090/05, p. 6.

⁷⁸ See Council document 06232/04, p. 29.

⁷⁹ Interview with new member state representative, May 29, 2006.

no “teeth” – that is, that they had veto power over any reform suggested during that review process.⁸⁰

The east European member states accepted even *further* cuts to their own cohesion funds in order to help bring about an agreement. These cuts were made, specifically, through a shift in the allocation of cohesion funds from these (poorer) new member states to (richer) old member states. This shift was necessary to meet the requirements of richer states, which still had regions that were cohesion recipients,⁸¹ as well as the fact that the overall budget and cohesion totals had to be kept down to ensure the agreement of the “1 percent coalition.” The acceptance of what amounted to further cuts to their own cohesion funds represents another significant concession on the part of the east European member states. In return, they were allowed increased flexibility in their ability to use their cohesion funds – essentially making the funds they were given easier to obtain and put to use.

Overall, the net contributors either adopted confrontational bargaining strategies or, at the very least, offered very minor concessions. In return, they received significant concessions from their weaker bargaining opponents. These strategies are consistent with the absolute gains focus of the negotiation and the distribution of bargaining power among the states.

Remember, bargaining is complex

Before concluding, it is important to recognize that while the EU states are constrained in their ability to adopt rule-changing strategies, that does not mean that they do not sometimes *try* to do so – and even, at times, succeed. Any time a state is disadvantaged by the current contextual rules, it has an incentive to try to change them. This is the case even

⁸⁰ Interview with Financial Working Group member, June 8, 2007.

⁸¹ The shift was specifically targeted at what were referred to as “phasing out” regions. These “richer” regions used to qualify for cohesion funds, but no longer met the eligibility requirements due to the fact that the ten “poorer” east European member states had been admitted to the European Union in 2004. This enlargement lowered the maximum GNI per capita ceiling that set the eligibility for a region to receive funds. To accommodate the states with these “phasing out” regions, it was agreed that these regions would not immediately lose support, but that they would be “phased out” from EU funds. In an additional concession to the richer cohesion-recipient states, the funds for these “phasing out” regions was increased from 4.84 percent under the Luxembourg proposal to 5 percent of total cohesion funds. In addition, the maximum amount regions in states whose GNI per capita is over 99 percent of the Community average could receive was increased from 2.62 percent to 2.67 percent from the June to December proposals of 2005.

in EU negotiations. In particular, the overall EU decision-making context provides states with other institutional actors that they can influence to try to change the intergovernmental bargaining context within the Council. These rule-changing efforts are even evident in some of the discussions above.

Take the case of the Services Directive negotiations. Even though the more protectionist states had the better BATNA in this case, they were constrained in their ability to use that power to wield a veto because of the (qualified) majority voting context within which they were interacting. As described above, they were not able to construct a blocking coalition to extract the concessions they needed to be able to remove the country of origin principle. Moreover, they could not change the rules of the game and remove the country of origin principle on their own, because the EU's institutional rules governing how the bargaining agenda could be changed required the agreement of the Commission – which at the time was strongly defending its original proposal.⁸²

However, this intergovernmental bargaining interaction was part of a larger decision-making context which involved the European Parliament as a co-legislator. If the Parliament did not agree, the agreement would not pass through the process as a *whole*, even if it passed in the Council. The Parliament was therefore another institutional actor that the protectionist states could potentially influence to affect the negotiated agreement. This is exactly what these protectionist states did. They went outside the intergovernmental Council negotiations to change the context of that interaction. Representatives from states like France, Denmark, and Germany lobbied key members of the Parliament to try to get them to change the rules of the game. Consistent with these interests, the Parliament did change the agenda in its own internal agreement by removing the country of origin principle and replacing it with the freedom to provide services principle. Highlighting the influence the member states had in this process, one protectionist state representative argued that the language underlying the new freedom to provide services principle created by the Parliament – specifically the distinction between “access to” other markets and the “exercise of” services provision within them – was wording explicitly used in the proposal his delegation sent to members of Parliament. “We came up with the idea . . . This became the

⁸² Absent the agreement of the Commission, member states could also change the issues on the agenda with unanimity support in the Council – something the protectionist states again did not have in these negotiations.

model of Evelene Gephardt, the [lead Parliamentarian] on this. The so-called Gephardt model was originally [our member state's] model, which we sold to her fairly early on."⁸³ By influencing the Parliament's agreement, the context within the intergovernmental Council changed, with the European Commission adopting this principle in the revised draft proposal it presented to the Council in April 2006. Moreover, the involvement of the Parliament provided the protectionist member states with the ability to veto the country of origin principle in the *overall* agreement – something they could not do in the Council negotiations alone.

As this case helps to illustrate, playing by the rules of the game and trying to change them are inevitably intertwined. Any state disadvantaged by the current bargaining context has an incentive to try to change it. Even in the EU where the ability to do so is fairly limited, states can still sometimes find ways to change the rules. Analyzing the role that contextual rules play in intergovernmental bargaining processes is therefore always a bit more messy than one would like, due to the complexity of real-world international bargaining.

This does not mean, however, that the theory presented in Chapter 3 does not apply. Indeed, if the contextual rules of the game did not affect states' bargaining interactions, they would have no incentive to change them. The bargaining agenda exerted an important influence on the intergovernmental bargaining in the Council – both in the first phase of the Services Directive negotiations and in the second. The protectionist states would not have needed to change the bargaining agenda if it did not matter, and the new agenda clearly played a role in fostering the exchange of concessions that the member states made in the end.

In addition, the rule-changing strategies were exerted by states with greater material power in the EU. It was France and Germany that largely influenced the Parliament – two states with some of the greatest material power in the EU. The predictions of both the rule-compliant and rule-changing aspects of this theory can therefore help us to understand this case. It is simply a fact of the real world that they are never quite as separate as we might like when trying to conduct simple and straightforward empirical analyses. International bargaining is complex and dynamic, and the two-part theory presented here can help us to deal with those dynamics and, in doing so, better understand international bargaining processes.

⁸³ Interview with member state representative, May 16, 2006.

Despite this complexity, the empirical analyses in this chapter demonstrate that across a wide variety of issues areas, the rule-compliant part of the theory can help us to understand when and why the states of the EU adopt different types of bargaining strategies. As the results reported in the statistical analyses show, EU states facing costly alternatives to agreement are more likely to offer concessions, and all EU states are more likely to offer at least some concessions when bargaining over issues that are differently valued. In addition, states with greater bargaining power in the EU are more likely to win asymmetrically large concessions in settings characterized by a focus on absolute gains and more likely to offer greater concessions in settings characterized by a focus on relative gains. The Services Directive and Financial Perspective case studies were helpful in highlighting these effects, as well as the causal mechanisms underpinning them.

The next chapter examines these same dynamics in multilateral trade negotiations in the GATT context. By doing so, it helps to show that the contextual rules of a negotiation not only affect intergovernmental bargaining in the EU, but also characterize very different types of bargaining interactions.

Playing by the rules in GATT/WTO negotiations

Negotiations over the creation and expansion of the international trade regime are some of the most prominent examples of multilateral, inter-state bargaining in the international system. As of today, nine different rounds of negotiations, spanning over sixty-five years, have taken place in the post-World War II era.¹ These negotiations have resulted in some of the most cooperative international bargaining *outcomes* to date: the formation of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO), the deepening of the trade liberalizing measures fostered by these institutions, and the expansion of these measures to more and more sectors of international trade.

While these negotiations all dealt with the liberalization of international trade, and almost always resulted in a cooperative agreement,² the bargaining *strategies* states adopted in these negotiations varied considerably – both across states and over time. For example, the early years of the Uruguay and Doha Rounds were both characterized by highly confrontational bargaining behavior. However, bargaining in the Uruguay Round changed in the later years, and was characterized by compromise, and an overall exchange of concessions by the various coalitions of states. In particular, the developing countries' strategies changed considerably – from highly confrontational strategies characterized by an outright refusal to sign on to agreements on trade-related aspects of intellectual property rights (TRIPs), trade-related investment measures (TRIMs), and trade in services, to strategies characterized by the offering of significant concessions on these issues.³ In contrast, bargaining in the Doha Round

¹ The nine different GATT/WTO negotiation rounds include Geneva 1947, Annecy 1949, Torquay 1951, Geneva 1956, Dillon 1960–1, Kennedy 1964–7, Tokyo 1973–9, Uruguay 1986–3, and Doha 2001–present.

² The exception is the Doha Round, which has not yet resulted in an agreement.

³ See Zutshi (1998) for a description of both the refusal to offer concessions and the later willingness to concede.

continued to be quite confrontational for over ten years, with little flexibility shown from either the developing or developed countries, even after all that time. What explains these differences in states' bargaining strategies in multilateral trade negotiations? When and why do some states offer concessions on some issues while others do not? And why do states' strategies sometimes change over time?

Drawing on the argument laid out in the early chapters of this book, we can begin to answer these types of question by recognizing that these trade rounds consist of multiple phases, made up of multiple separate bargaining interactions, which unfolded over time. Because they deal with different substantive issues, each individual bargaining interaction is characterized by its own contextual rules – that is, its own issue linkage structure, its own no-agreement alternative, and its own degree to which the states focused on absolute/relative gains. By systematically analyzing these rules, and the individual bargaining strategies states adopted in response to them, we can begin to address important questions regarding states' bargaining behavior in multilateral trade negotiations.

To test this argument, this chapter analyzes variation in states' bargaining strategies across the multiple phases of the Uruguay Round (1986–93). It focuses on the Uruguay Round negotiations because the member states' bargaining interactions during this trade round were largely constrained by the rules of the game. First, states' ability to alter the issue linkage structure was constrained by the procedural rules of the GATT decision-making process. As laid out by these rules, the agenda for the Uruguay Round was decided in a previous round of negotiations. Once the official negotiations began, states could not add issues to (or remove issues from) the bargaining agenda. In addition, states' ability to alter the no-agreement outcome was constrained by the contextual rules governing the Uruguay Round negotiations. Due to the "low politics" nature of these trade negotiations, the use of coercive threats was unlikely to be viewed by target states as a credible response to the desire for concessions on most of these trade issues. The threat to go it alone was also not credible in the Uruguay Round negotiations, because each side needed the participation of the other in order to achieve its central goals in the negotiation. The developed countries needed the participation of developing countries – the states with the fewest protections for intellectual property rights, and some of the greatest barriers to investment and trade in services – in order to achieve a strong agreement on these issues. On the other side, the developing countries needed the developed countries to lower their barriers to imports

in sectors in which the developing countries were major exporters, such as textiles and tropical and agricultural products. These coercive and go-it-alone threats were therefore possible, but not likely to be very credible.

This does not mean that rule-changing strategies were impossible, nor that they were not adopted during the Uruguay Round. Indeed, the reality of real-world international bargaining is that rule-compliant and rule-changing strategies almost always go hand in hand, interacting in important and interesting ways. The Uruguay Round was no exception. What these constraints *do* mean is that, like the case of the EU negotiations, the procedural and contextual rules of the GATT create a real-world international bargaining setting that very closely approximates one in which the rules of the game can be treated as exogenous to states' bargaining interaction for purposes of testing the effects they exert on states' rule-compliant bargaining behavior.⁴ The Uruguay Round negotiations therefore represent an important set of cases to analyze for purposes of this book.

The analysis that follows is in no way intended to be a comprehensive discussion of the Uruguay Round interactions.⁵ Rather, the goal in this chapter is twofold: (1) to test the rule-compliant part of the book's theoretical argument in a setting very different from that of the European Union, and (2) to demonstrate how the techniques proposed in this book can help us to systematically analyze the bargaining strategies adopted in some of the most complex negotiations in the modern international system – multilateral trade negotiations in the GATT/WTO context. By doing so, it can help to organize our understanding of these negotiations and identify patterns in states' behavior within them.

⁴ As discussed in detail later in the chapter, the rule-changing strategies adopted in the Uruguay Round were adopted by states *after* rule-compliant strategies had already been adopted in response to the original set of bargaining rules, and these rule-compliant strategies did not result in an outcome that went their way. In addition, the GATT Secretariat was the actor that officially had to carry out the rule change – presenting a draft agreement with the new rules. While it is clearly not a perfect case, the rules of the game and states' rule-compliant strategies were clearly linked. Moreover, the new rules can still be treated as largely exogenous to the *rule-compliant bargaining interaction of interest* in the majority of these analyses, even though a rule-changing strategy also took place between the rule-compliant strategies of the first phase analyzed here and the creation of the new structure and rules at the beginning of the second.

⁵ Many other works have undertaken such comprehensive analyses of the Uruguay Round, as well as other multilateral trade negotiations. For key examples, see [Watkins 1992](#); [Stewart 1993](#); [Hampson and Hart 1995](#); [Wiener 1995](#); [Ricupero 1998](#); [Bhagwati and Hirsch 1998](#); [Barton et al. 2006](#); [Deveraux, Lawrence, and Watkins 2006](#); [Odell 2006](#).

Background of the Uruguay Round negotiations

In 1979, several states put forth the idea that the GATT member states should take steps to further liberalize international trade, moving the GATT system forward. Negotiations thus began over whether to take such steps and what issues would (and would not) be put on the agenda for inclusion in a new round of trade negotiations. After several years of difficult negotiations, the GATT member states finally agreed on an agenda for a new round in 1986 – setting broad and ambitious goals for what they hoped to accomplish during these negotiations. The new round, known as the “Uruguay Round,” thus began.⁶

To deal with the multiple issues placed on the agenda during the prior agenda-setting negotiations, the GATT member states created a carefully structured negotiating plan.⁷ The issues were divided into two types – those dealing with trade in goods and those dealing with trade in services. Separate negotiating groups were created to deal with each – the “Group on Negotiations in Goods” (GNG) and the “Group on Negotiations in Services” (GNS). The negotiating group on goods also dealt with a wide variety of different issue areas, including (1) standard market access issues such as tariffs, non-tariff barriers, and trade in agriculture and textiles, (2) rule-based issues such as revising the current GATT Articles, codes, and dispute settlement mechanism, and (3) “new” issues such as trade-related aspects of intellectual property rights (TRIPs) and investment measures (TRIMs). The GNG was therefore further broken down into fourteen negotiating groups which met separately to deal with each of these individual issue areas.⁸

⁶ This round is referred to as the Uruguay Round because it was in Punta del Este, Uruguay, that the agenda for the round was agreed, and the negotiations for the round itself officially began.

⁷ The member states were the main actors in this process, and set out the negotiating structure in a multi-stage process. The Punta del Este Declaration that set the round in motion separated the GNG and GNS, and created a Trade Negotiations Committee (TNC) to oversee both. The delegations then negotiated throughout the remaining months of 1986 to subdivide the GNG into the fourteen negotiating groups (Hampson and Hart 1995).

⁸ Negotiating Group 1 (NG1) dealt with issues related to tariffs, NG2 with issues related to non-tariff barriers, NG3 with natural resource-based products, NG4 with textiles, NG5 with agriculture, NG6 with tropical products, NG7 with the GATT Articles, NG8 with the Codes, NG9 with safeguards, NG10 with subsidies, NG11 with TRIPs, NG12 with TRIMs, NG13 with the dispute settlement mechanism, and NG14 with the functioning of the GATT.

The Uruguay Round began in 1986 with fifteen different bargaining interactions taking place⁹ – including the fourteen negotiating groups in goods plus the group negotiating the General Agreement on Trade in Services (GATS). Each of these bargaining interactions included a variety of micro-level issues that needed to be dealt with under their respective subject headings. Thus, while some scholars analyze the Uruguay Round as a whole in terms of the linkages drawn (or that could be drawn) between the various issue areas on the table for agreement,¹⁰ they were negotiated separately for a large part of the bargaining process.¹¹

The developing states were also adamantly opposed to any attempts to draw linkages between the more standard market access negotiations and the negotiating groups dealing with “new” issues such as trade in services. Immediately after the Punta del Este Declaration, which set the Uruguay Round in motion, the representative of Pakistan expressed his understanding that the agreement was such that the modalities for the negotiations in sectors such as trade in textiles would be pursued *independently*, and would not be contingent on any other agreement.¹² The developing countries argued that the current state of affairs of trade in sectors such as agriculture and textiles – sectors important to their own interests – went directly against the rules of the GATT. High tariffs, domestic subsidies, and export subsidies characterized agricultural trade. In addition, the Multifibre Arrangement, governing trade in textiles, allowed for the implementation of quotas to limit imports from competitive developing country producers. Because these measures directly contradicted general GATT principles, the developing states argued that these measures should be brought into conformity with the

⁹ For more details on the structure of these negotiating groups, see the analysis of [Hampson and Hart \(1995\)](#).

¹⁰ While the language of the Punta del Este Declaration which set the round in motion does use the phrase “single undertaking,” it was *not* used in a way that was intended to link these issues together in the way one might think. As India specifically argued when it worked to *prevent* a real substantive linkage of these issues later in the negotiations, the concept of the single undertaking originally proposed was designed to reference the fact that these negotiations would take place in parallel (i.e., within the same time frame). “No other linkage – legal, procedural or otherwise – has been envisaged.” For the full, detailed discussion, see GATT document MTN.GNS/W/4 para. 4. The scholarly analysis of [Singh \(2006\)](#) backs this up. Drawing on interview-based evidence, he argues that while scholars often draw linkages between these different issue areas and concessions offered between them (e.g., TRIPs and textiles), this was not actually the case.

¹¹ This is not to argue that these issues were not linked together in later phases of this bargaining process. This clearly was the case.

¹² See GATT document MIN(86)/SR/7.

GATT system *without* having to make any reciprocal concessions on the “new” issues. As the informal group of developing countries explicitly stated, “Attempts are being made at establishing linkages in concessions among these areas. The developing countries have strongly rejected such attempts and will continue to do so.”¹³

The early years of the Uruguay Round negotiations were thus characterized by fifteen separate bargaining interactions, each dealing with the particular issues at stake in their own respective subject headings. Negotiations continued in this way through 1990, when the Uruguay Round was originally scheduled to end. However, 1990 came and went without an agreement being reached. Negotiations continued intermittently throughout 1991 with still no agreement in sight.

In an attempt to help move the negotiation process forward, the GATT Director-General (Arthur Dunkel) put forward a draft proposal for agreement in December 1991. This proposal, known as the “Draft Final Act” (also now referred to informally as the “Dunkel Draft”), was the first negotiating text that included *all* issues together – that is, formally linking them together for negotiation and trade-offs. The negotiations over the Draft Final Act, which took place in 1992–3, therefore dealt with all issues on the table together as one package deal.

The rules of the game clearly changed when this Draft Final Act restructured the negotiations by linking together issues that before had been negotiated separately. It was clearly not only the GATT Secretariat and Arthur Dunkel that were behind this change. Some scholars specifically highlight the fact that Dunkel “consulted closely with key delegations” when drafting his proposed final act.¹⁴ Specifically, the United States, the EC, and Canada¹⁵ pushed hard for this linkage, or what is often referred to as the “single undertaking.” As discussed in detail at the end of the chapter, this rule-changing effort by these states was both a power play as well as a strategy that altered the issue linkage structure in a way that helped to bring about a bargaining agreement. For purposes of the introductory discussion here, however, the key point to note is that it created a new phase of negotiations, characterized by a new set of bargaining

¹³ GATT document MTN.TNC/W/19, para. 14.

¹⁴ Hampson and Hart 1995: 230.

¹⁵ Barton et al. (2006) highlight the role of the United States and EC states in pushing for this; Odell (2000) highlights the role of Canada in pushing for this by putting forth a proposal for a multilateral trade organization to replace the GATT.

rules, and thus a new bargaining interaction to analyze in the Uruguay Round.

The Uruguay Round therefore consisted of multiple “phases” which took place over time, and which were structured in different ways. Two key phases are highlighted and analyzed in this chapter. One is the phase from 1986 to 1990, which consisted of the fifteen separate negotiating groups. The other, which took place from 1992 to 1993, consists of the negotiation over the Draft Final Act.¹⁶

Taken together, these two phases consisted of sixteen separate bargaining interactions that took place over the course of the Uruguay Round – each of which dealt with its own set of issues, and was characterized by its own set of contextual rules. Focusing on the effect of the rules in each of these bargaining interactions can therefore help us to understand when and why states adopted particular bargaining strategies, why the developed states were forced to turn to the power play captured by the “single undertaking”, how the “single undertaking” changed the rules of the game, and why states’ bargaining strategies changed over time during the Uruguay Round.

“Rules of the game” in the Uruguay Round context

In each of the bargaining interactions identified above, the strategies of the GATT member states were shaped and constrained by the rules of the game. The rules highlighted throughout the book therefore serve as the central independent variables in this analysis: (1) the degree to which the set of issues being negotiated was differently valued by the bargaining states, (2) the beneficial/costly nature of the no-agreement alternative for each of the bargaining states, and (3) the degree to which

¹⁶ This list is not meant to be exhaustive, but to capture the key interactions in the Uruguay Round for the purpose of testing the hypotheses generated in Chapter 3. At the same time, by focusing on the most central bargaining interactions, the analyses also help to highlight the central patterns in these negotiations. In particular, bargaining interactions in 1991 are not analyzed here because there is not enough empirical evidence (in the form of state communiqués and negotiating documents, which are used to construct the entire analysis presented in this chapter) to create an analysis of separate negotiations during this time period. [Hampson and Hart’s \(1995\)](#) analysis of the Uruguay Round backs up the lack of empirical evidence during this time – arguing that little substantive progress was made in 1991, and that only the agriculture group even met to try to reach agreement. Eliminating this time period of interactions from the analysis in this chapter therefore makes sense, based both on the available negotiating documents and on scholarly analyses of these negotiations.

states focused on absolute or relative gains in a particular negotiation. This section describes how we can think about these abstract concepts in the context of multilateral trade negotiations, and how trade data and negotiating documents were used to code them in each of the Uruguay Round negotiations.

Issue linkage structure. Empirically, the issue linkage structure captures the degree to which the (micro-level) issues within each negotiating group in each phase of the Uruguay Round were more (or less) differently valued by the GATT member states. It is coded by identifying the key issues being negotiated and measuring the average size of the zone of agreement created by the linkage of those micro-level issues that are at stake in a given bargaining interaction. This measure is coded by plotting each state's position on each issue and the degree of flexibility they had, in terms of their willingness to move from that position. Those factors are then used to calculate the zone of agreement between each pair of states on each issue and averaged across all issue-pairs. This measure is coded using the detailed information laid out in each of the summary documents and state communiqués associated with every meeting of every negotiating group in the Uruguay Round.¹⁷

As an illustrative example of the types of micro-level issues discussed in these negotiations, the negotiating group on GATT Articles (NG7) included the following issues for discussion: Articles XII and XVIII regarding balance-of-payments issues, Article XVII regarding state-trading, Article XXIV governing the relationship between the GATT and preferential trade agreements, Article XXVIII regarding renegotiation rights, Article XXV regarding the granting of waivers, and the Protocol of Provisional Application.

States' positions on each of these issues were coded based on membership in the overall coalitions of interest on these issues. As an illustrative example, consider the issue of Articles XII and XVIII regarding balance-of-payments issues in the GATT Articles negotiating group. The two coalitions that formed in these negotiations largely consisted of the developing versus the developed countries. Developing countries wanted to protect these balance-of-payments measures to be able to address the

¹⁷ The reason that these documents were used was because interviews with state representatives involved in the Uruguay Round could not be conducted as they were in the EU case, while these negotiating documents were readily available.

significant balance-of-payments problems many of them were facing at the time. In contrast, the developed countries (most of whom were not facing balance-of-payments issues) were pushing for revisions. These two coalitions are therefore coded on opposite sides of the issue.

The flexibility states had in their positions was coded based on their official state communiqués, as well as economic data regarding the issue of interest. Regarding Articles XII and XVIII, the developing countries, which were coded with the position of wanting to protect the current state of these balance-of-payments measures, were coded as having had “small” flexibility if they made an explicit statement defending these balance-of-payments practices, and “very large” flexibility if they made an explicit statement calling for a revision of these articles. If they had not made an explicit statement regarding these articles, but had previously evoked them in practice, they are coded as having had “medium” flexibility. Finally, if they did not make an explicit statement and had never evoked these articles in practice, they are coded as having “large” flexibility on this issue. The developed countries are coded in the same way – albeit in reverse, given their opposing position on this issue.

These elements were assigned numerical values (as described in the appendix) and used to calculate the zone of agreement between each pair of states on each issue. They are then averaged across all issue-pairs in each negotiating group to calculate the average zone of agreement created by the linkage of the issues on the table. Issues that were more differently valued create a larger zone of agreement, and thus a larger value of this measure, all else constant.

Beneficial BATNA. As a contextual rule of the game, the BATNA captures how beneficial (or costly) the no-agreement outcome is for a given state. It is measured as a categorical variable, labeled BENEFICIAL BATNA, ranging from 0 to 3. Given that coercive threats were largely non-credible in the Uruguay Round, the status quo captures the no-agreement outcome in these negotiations. Larger values of this variable indicate that the status quo alternative to agreement provided a state with a more beneficial alternative to agreement, and smaller values indicate that the status quo provided a state with a fairly costly alternative to agreement.

In the context of the Uruguay Round multilateral trade negotiations, the goal of an agreement was to break down barriers to the free flow of trade in a particular sector. The beneficial/costly nature of a state's BATNA is therefore coded based on the importance of exports in that

sector to a state's overall economy. States with significant exports needed a reduction in trade barriers to help support their industry, while states without such exports could have their own industries in that sector benefit by remaining at the status quo. Consider the case of the negotiations in the textiles sector negotiating group (NG4). States like Pakistan had textile exports that were so significant that they were greater than one standard deviation above all other GATT member states' exports of these products, both as a percentage of their GDP and as a percentage of their overall exports. Absent an agreement to secure trade liberalization in the textiles sector – a sector currently characterized by substantial barriers to trade – these states faced significant costs in terms of their ability to secure profits from the sale of textiles to other states. States like Pakistan found themselves in a vulnerable position in these negotiations, and are therefore coded as having a very costly BATNA. In contrast, states such as Mauritius were actually net importers of textile products. These states therefore had little to lose – and their textile industries could even potentially gain – from the status quo lack of liberalization in the textiles trade. States such as Mauritius are therefore coded with a highly beneficial BATNA in these textile negotiations.

This discussion illustrates how we can think about a state's BATNA in the context of multilateral trade negotiations. A full description of the coding rules for this variable is laid out in the appendix, including a discussion of how the BATNA was coded in each of the non-market access negotiations.

Absolute/relative gains focus. Finally, while the economic issue area is often argued to be characterized by a focus on absolute gains,¹⁸ a micro-level analysis of the sector-specific negotiating groups of the Uruguay Round reveals that negotiations in some sectors were characterized by a focus on relative gains, while negotiations in other sectors were characterized by a focus on absolute gains. In particular, Robert Powell¹⁹ argues that states focus on relative gains in the economic realm when states can use the advantages gained from the current agreement to drive another state's industries completely out of the market down the road.²⁰ Some

¹⁸ e.g., Lipson 1984; Mearsheimer 1994/1995.

¹⁹ Powell 1991.

²⁰ For Powell's specific discussion of these conditions, which should lead to a focus on relative gains in the economic sector, see 1991: 1306. While he argues that the overall concern causing states to focus on relative gains stems from a concern with the effects it has on a state's absolute gains in the long term, the *immediate* concern of states in the

economic sectors negotiated in the Uruguay Round had this characteristic while others did not. The focus on absolute/relative gains across the negotiating groups therefore varied – and this variation is captured by the variable labeled *RELATIVE GAINS*. This is a dichotomous variable with a code of 1 indicating a focus on relative gains and a 0 indicating a focus on absolute gains.

The key feature of a bargaining interaction argued to cause states to focus on relative gains did characterize some economic sectors that were dealt with in the Uruguay Round. Specifically, this was a key characteristic of the “new” issue areas: TRIPs, TRIMs, and trade in services. In all three of these issue areas, the developed countries had well-developed, highly competitive industries, while the developing countries had only infant industries. Protectionist policies were therefore central for developing countries to allow their industries to become competitive in these sectors by remaining insulated from competition from the developed countries’ industries. The fear was that if they had to face unfettered competition with the highly developed industries from developed countries, infant industries in developing countries would not even have a chance to gain a foothold in the market before being driven out. Developed countries, on the other side, had a strong interest in preserving the foothold they held in these markets.

Statements made by developing states during the negotiations back up this argument. For example, Pakistan argued that an “essential requirement in any agreement on trade in services [was] protecting the growth of services in the developing world from instant competition. His delegation insisted on the essential need for initial protection for infant services in the developing countries.”²¹ Brazil voiced a similar concern. “The abuse of dominant market positions is one of the principal obstacles to the expansion of trade in services, particularly due to the distortions it causes to price structuring and to the restrictions it imposes on the access of new participants to the market.”²² Expressing the view held by most developing countries regarding the intellectual property rights regime proposed by the developed countries, India’s ambassador to the GATT voiced a similar sentiment regarding the effect this would have on

current bargain is one of relative gains. Given that the current bargain is the focus of this analysis, the focus on relative gains of states in these negotiations is therefore the important factor to focus the analysis. Keohane 1993 echoes this argument in his discussion of the conditions under which states focus on absolute or relative gains.

²¹ GATT document MTN.GNS/W/31, paragraph 46.

²² GATT document MTN.GNS/W/34: 4-5.

developing countries' ability to develop their high-technology industries. "The developed countries had themselves acquired technology under lax IPR [intellectual property rights] regimes," and "IPRs are not different from other monopolies . . . they confer abnormally high profits upon their owners, invite abuse and restrict the spread of technology and its benefits."²³

The focus on relative gains in these sectors stands in contrast to the absolute gains focus that characterized the majority of the other economic sectors discussed in the Uruguay Round. While lowering tariffs would result in increased market access for a state's bargaining opponents, and thus decrease the market share of a state's own industries, the focus would likely still have been on absolute gains.²⁴ None of these other issue areas was characterized by infant industries on one side, so a gain for the other would not necessarily translate into its industries being completely driven out of the market. It might require some structural adjustments by a state's industries in order to increase their competitiveness, but it would not translate into the same automatic market loss as that associated with the "new sectors." These other sectors – covering market access issues such as trade in agriculture, tropical products, natural resource-based products, textiles, and the overall tariff and non-tariff barrier negotiating groups – are therefore coded as being characterized by a focus on absolute gains.

Explaining Uruguay Round bargaining strategies: empirical analysis

These three contextual rules shaped the bargaining behavior of the GATT member states within the Uruguay Round negotiations in important ways. Given that their ability to alter these rules was largely constrained (as discussed at the beginning of the chapter), the main dimension

²³ Zutshi 1998: 47, 43.

²⁴ Formally, the difference can be seen by a comparison of these simple utility functions. A zero-sum negotiation focused on absolute gains implies that any gain for one state is a loss for the other. Dividing a pie of 1 between two states, one state receives x and the other receives $1 - x$. This is the zero-sum part of the calculation – any increase in x directly translates into a loss in the payoff $1 - x$, and vice versa. If the states are focused on absolute gains in this negotiation, their utility function is characterized by the absolute value of what they receive, x and $1 - x$, respectively. However, a relative gains focus implies that their utility is derived from how much *more or less* than the other they receive. The utility for each state is the difference between their own payoff and the payoff of the other state. The payoffs are therefore $x - (1 - x)$ and $(1 - x) - x$, respectively.

of variation that needs to be explained in the Uruguay Round is the cooperative/confrontational nature of the GATT member states' rule-compliant strategies.

Dependent variable: cooperative v. confrontational strategies

The dependent variable codes the cooperative/confrontational nature of the GATT member states' bargaining strategies. It is coded as an ordered, categorical variable with larger values indicating a strategy that is more cooperative in nature, and smaller values indicating a strategy that is more confrontational in nature. Each category has a specific theoretical meaning, as discussed in the early chapters of the book. As described below, each of these categories can help us understand the strategies states adopted in the multilateral trade negotiations of the Uruguay Round.

A state is coded as having adopted a "highly cooperative strategy" if it adopted autonomous liberalization measures in the sector of interest, or in some other way made concessions in the sector being negotiated without receiving any concessions in return (and even without the promise of future concessions in return). For example, over the period covering the first phase of the Uruguay Round (1986–90), Brazil autonomously reduced its tariffs from an average of around 50 percent to around 35 percent; the Republic of Korea autonomously reduced its average tariffs on industrial goods from 18.7 percent to 9.7 percent; and Australia autonomously reduced its tariffs on a number of industrial products.²⁵ These strategies are coded as highly cooperative strategies in the negotiating group on tariffs. Australia also autonomously reduced assistance it provided to a number of agricultural industries during this time, representing a highly cooperative strategy by Australia in the agriculture negotiating group. Any similar strategies are coded in the same way.

A state is coded as having adopted a "somewhat cooperative strategy" if it made a proposal to liberalize its trade in a particular sector (or to make concessions of some kind in that sector), but did not actually do so autonomously. For example, the EC forwarded a proposal in the negotiating group on tariffs stating that it was prepared to bind its tariffs on industrial products at reduced rates. However, it also indicated that

²⁵ For a catalog of these measures, as well as autonomous measures taken by other countries, see GATT document MTN.GNG/MA/W/10/Rev.2.

these concessions were conditional, and could be modified. Because these offers were conditional, rather than autonomously offered, they are coded as “somewhat” cooperative, rather than “highly” cooperative.²⁶

A state is coded as having adopted a “highly confrontational strategy” if it tried to extract concessions in a particular issue area. For example, during the negotiation over the Draft Final Act, the United States and the EC put the entire agreement on hold until they worked out their own difficulties and were satisfied with the outcome. In essence, they “vetoed” any version of the agreement that did not meet their expectations until they mutually agreed on a text, making the other GATT member states wait for their negotiations to conclude.²⁷ In an alternative concession-extracting approach, multiple developing countries argued in the negotiations during the 1986–90 phase that many of the TRIPs, TRIMs, and services issues placed on the table should not even be discussed.²⁸ By arguing that they would not even be willing to discuss these issues, they in essence “vetoed” any potential agreement on them – forcing the developed countries that were pushing for further cooperation in these areas to accept that this would not happen. Other similar confrontational strategies are coded in the same way.

Finally, a state is coded as having adopted a “somewhat confrontational strategy” if it did not offer any concessions or attempt to extract concessions, or if it made statements indicating a demand for concessions. As an example of this type of strategy, Finland forwarded a proposal in the negotiating group on non-tariff barriers which specifically stated that while requests and questions had been forwarded to Finland and discussed in bilateral contexts, Finland “consider[ed] that the current situation [did] not require the tabling of concrete offers by Finland in this

²⁶ For the details of this proposal, see GATT document MTN.GNG.NG1/W/54.

²⁷ Barton et al. 2006.

²⁸ For just a few examples, see GATT documents MTN.GNG/NG11/8, MTN.GNG/NG11/39, MTN.GNG/NG11/40, and MTN.GNG/NG11/27. Providing more detail, MTN.GNG/NG11/27 explicitly states: “At the meeting of the Negotiating Group on Goods in July the developing countries have expressed their collective concern over the manner in which discussions in this Group have proceeded. The statement clearly points out that the GATT deals with the liberalization of international trade in goods as they cross national boundaries, therefore the scope of the negotiations should be confined to issues relating to the enforcement of intellectual property rights at the border only” (p. 1). MTN.GNG/NG11/8 (para. 48), which is the summary document for that referenced document, adds: “it was not its function to consider whether the *rights granted were themselves* sufficient; this was a matter for national governments.”

area.”²⁹ This refusal to put forward concessions represents a “somewhat confrontational” strategy.

Together, these four categories make up the dependent variable in the analysis below. It is this variation in the bargaining strategies adopted by the GATT member states that can be explained by variation in the contextual rules of the game. The analysis below shows how this is the case.

Set-up of empirical analysis

To test the effects of the rules of the game on the cooperative/confrontational nature of the GATT member states’ bargaining strategies, an original dataset is constructed, drawing on primary negotiating documents and state communiqués, as well as relevant trade data. For each bargaining interaction in the Uruguay Round, this data is used to code each of the contextual rules described throughout the book, as well as each state’s bargaining strategy. Statistical analyses are then used to test how these contextual rules affect the GATT member states’ bargaining strategies across the multiple bargaining interactions of the Uruguay Round.

Given the ordered, categorical nature of the dependent variable, and the fact that the data is also “multilevel” in nature – that is, the bargaining strategies of the EU member states (level 1) are clustered together within each individual bargaining interaction/phase (level 2) – multilevel ordered logit models are used to test the predictions of hypotheses 1 through 3. In addition to the key variables included in each model, variables are included to control for additional factors that might affect states’ choice of bargaining strategies in multilateral trade negotiations. Given that economic power is likely to be the material power that matters in international trade negotiations, a measure of each state’s GDP is included to control for states’ material power.³⁰ Variables are also included to control for a state’s trade dependence,³¹ and whether or not the interaction took place in the final phase of the negotiations – as negotiations in this later phase were clearly different from the negotiations that came before them.

²⁹ GATT document MTN.GNG.NG2/W/81.

³⁰ This measure is logged to account for skewness.

³¹ This is measured as $\frac{\text{exports} + \text{imports}}{\text{GDP}}$.

The first analysis is presented in Table 6.1. This analysis tests the effects of hypotheses 1 through 3 in the Uruguay Round negotiations. It analyzes the effects on a GATT member state's bargaining strategy that is associated with (1) negotiating over a set of issues that are more differently valued, (2) having a more beneficial BATNA, and (3) the absolute/relative gains context of the negotiations on a GATT member state's bargaining strategy.

Testing hypotheses 1 and 2

Based on the predictions of hypothesis 1, we would expect states to adopt more cooperative strategies when engaged in negotiations where the issues on the table are more differently valued by the bargaining states, than they would in negotiations where they are not. The variable *ISSUE LINKAGE STRUCTURE* should therefore exert a positive effect on the cooperative nature of a state's bargaining behavior across all negotiations. As shown by the results reported in Table 6.1, this variable does exert such a positive, statistically significant effect. The effect is also substantively quite large. Across a wide variety of different bargaining interactions among the GATT member states, if the degree to which the issues on the table for discussion increases by one standard deviation, the odds of observing a state adopting a more cooperative strategy are over ten times as likely as observing it adopt any less cooperative strategy, holding all other variables constant.³² The issue linkage structure therefore not only exerts a statistically significant effect on states' bargaining strategies, but one that is substantively significant as well.

Based on the predictions of hypothesis 2, when bargaining with a focus on absolute gains, we would expect states to adopt more cooperative bargaining strategies when their no-agreement alternative is fairly costly, and more confrontational strategies when their no-agreement alternative is more beneficial. Given the presence of a variable capturing the interaction between having a beneficial BATNA and being in a setting where states focus on relative gains (*BENEFICIAL BATNA X RELATIVE GAINS*), the BATNA term alone indicates the effect of having a better BATNA when bargaining in an absolute gains context (i.e., when the relative gains variable takes on a value of zero). The variable *BENEFICIAL*

³² Specifically, for a one standard deviation change in the *ISSUE LINKAGE STRUCTURE* variable, the odds of observing a strategy that is more cooperative than any given category of the variable, *COOPERATIVE STRATEGY* is eleven times as likely as adopting a strategy in that category or lower, all else constant.

Table 6.1. *Testing hypotheses 1–3 in the GATT/WTO case*

Issue linkage structure [†]	19.865*
(H1: $\beta > 0$)	(1.095)
Beneficial BATNA	-.850*
(H2: $\beta < 0$)	(.105)
Beneficial BATNA x relative gains	.232
(H3: $\beta = 0$)	(.181)
Relative gains focus	-1.564*
	(.277)
Powerful state values agreement	.150
	(.167)
ln GDP	-.074*
	(.018)
Trade dependence	.168*
	(.031)
Final negotiating phase	2.429*
	(.396)
Cut1	-3.301
	(.848)
Cut2	2.140
	(.830)
Cut3	4.400
	(.839)
N	1192
level 2 units	16
log likelihood	-920.159
variance of level 2 random effects	.769
	(.161)

*Indicates $p < .05$

[†]This coefficient might, at first, appear unreasonably large for an ordered logit model. However, it is large because of the small range of this variable. When exponentiated out in the context of its actual range, the substantive effect is not unreasonably large. This effect is described in the text.

BATNA should therefore exert a negative effect on the cooperative nature of a state's bargaining behavior, all else constant. As shown in Table 6.1, the variable BENEFICIAL BATNA does exert such a negative effect – an effect which holds regardless of the state's material power.

The effects of the bargaining power a state derives from the beneficial nature of its BATNA not only exert statistically significant effects in

multilateral trade negotiations, but these effects are also substantively significant. If the beneficial nature of a state's BATNA is more beneficial – increasing by only one category – it is twice as likely to adopt a more confrontational strategy.³³ This is, again, a significant substantive effect.

Hypotheses 1 and 2: illustrative empirical examples. We can also see the effect of these two rules on states' bargaining strategies simply by examining the GATT negotiations themselves. Some negotiating groups, such as the one focused on agricultural trade, dealt with a set of issues that were not differently valued by the GATT member states. Instead, opposing states all wanted to win on the same key issues in this negotiation. For example, one of the main issues in the agricultural negotiating group dealt with the possibility of eliminating subsidies to domestic agricultural producers. On one side, the EC and the Nordic states placed significant importance on protecting domestic agricultural subsidies, while the Cairns Group and the United States, on the other, placed significant importance on eliminating these subsidies. These issues were therefore not differently valued by states with opposing interests.

In contrast, the negotiation over the Draft Final Act was characterized by the fact that different coalitions of states placed most importance on winning on different issues. The developing states placed most importance on winning on issues such as textiles and tropical products, while the developed states placed most importance on winning on issues such as TRIPs, TRIMs, and trade in services. These issues were therefore differently valued by the GATT member states. Based on the predictions of hypothesis 1, we would therefore expect to observe states adopting more confrontational strategies in interactions like the agricultural negotiating group and more cooperative strategies in negotiations like the one over the Draft Final Act.

Within each of those bargaining interactions – both of which were characterized by a focus on absolute gains – we also expect to observe variation in states' bargaining strategies, as predicted by hypothesis 2. For example, agricultural exporters like the Cairns Group faced a costly no-agreement outcome, given that the status quo during the 1980s was characterized by significant barriers to trade in agriculture. Within the

³³ Specifically, for a one unit increase in the BENEFICIAL BATNA variable, the odds of observing a strategy that is more cooperative than any given category of the variable, COOPERATIVE STRATEGY is only .4274 times as likely as adopting a strategy in that category or lower. The reciprocal is discussed for ease of intuition and interpretation of this result, all else constant.

agricultural group, we would therefore expect these states to adopt more cooperative strategies than the other states whose economies were not as dependent on agricultural exports. In the negotiations over the Draft Final Act, all issues were on the table. As several analysts have noted, the developing countries “needed” an agreement more than the developed states. As India’s ambassador to the GATT argued, “it was the assessment of the developing countries that they needed a multilateral trading system, based on principles of non-discrimination, much more than the developed countries.”³⁴ We would therefore expect to observe the developing countries offering a greater degree of concessions than the developed states in the negotiations over the Draft Final Act.

These predictions are illustrated by the reality of these cases. First, the predictions of hypothesis 1 go a long way in predicting trends that exist *across* these two bargaining interactions. Overall, the bargaining strategies states adopted in the agriculture negotiating group were significantly less cooperative in nature than were the strategies states adopted when negotiating over the Draft Final Act.³⁵ On the scale from 0 to 3 which represents the confrontational to cooperative nature of the dependent variable, the mean of the cooperative nature of the strategies states adopted was valued at 1.105 in the agriculture negotiating group – indicating that, on average, the GATT member states adopted fairly confrontational strategies. In contrast, the mean of the dependent variable in the Draft Final Act negotiations was 2.714 – indicating that, on average, states adopted cooperative bargaining strategies in this negotiation. This general trend in states’ bargaining behavior across the two negotiations is consistent with the predictions of hypothesis 1.

The predictions of hypothesis 2 go even further, helping to explain the variation *within* each of these bargaining interactions. First, within the agricultural negotiating group, where states focused on absolute gains, the Cairns Group states, which faced the most costly BATNA in these negotiations, tended to adopt more cooperative strategies than the other states in that same negotiating group. For example, Australia (a Cairns Group member) adopted autonomous liberalization measures in the agricultural sector during the 1986–90 period, reducing the government assistance it provided to its agricultural industries. New Zealand (also a member of the Cairns Group) also adopted a cooperative strategy, autonomously reducing tariffs on several agricultural items during the

³⁴ Zutshi 1998: 48.

³⁵ For more on these negotiations, see Breen 1993.

course of these negotiations.³⁶ In contrast to these cooperative strategies, states that were not highly dependent on agricultural exports adopted less cooperative bargaining strategies. In particular, the majority of non-Cairns Group states made no concessions of any kind in these agricultural negotiations. Some even made demands that they argued had to be met in order for them to be willing to “give” on these agricultural issues. For example, India argued that it could not decrease its agricultural trade barriers because these barriers were “necessitated” by the balance-of-payments difficulties it faced – a problem, India argued, that was felt by many developing countries. If developed countries wanted the developing states to lower their agricultural trade barriers, they needed to lower their market access barriers in sectors of export interest to the developing states in return.³⁷ (For India, this was the textiles sector.) This statement reflects a confrontational type of bargaining strategy.

The strategies adopted by Australia and New Zealand, on the one hand, and India, on the other, follow the predictions of hypothesis 2, based on the value of the status quo alternative for both sides. Of note, their strategies not only follow the predictions based on the power yielded by their BATNA, but they also show that these predictions do not always follow predictions based on states’ material capabilities. In particular, these are examples of a developing state demanding concessions while several developed states adopted cooperative strategies in return.

The strategies states adopted in the negotiations over the Draft Final Act also followed predictions based on the costly/beneficial nature of their BATNA. However, the BATNAs states faced in these negotiations were quite different, leading states to adopt different types of strategy than they did in the agricultural negotiating group. For example, India, which was in a powerful bargaining position in the agricultural negotiations (due to its lack of dependence on agricultural exports), was in a much weaker position in the negotiations over the Draft Final Act. In particular, as Zutshi argued in the quote presented above, India and the other developing countries were in need of access to the markets of developed countries in many of the economic sectors covered by the Uruguay Round.³⁸ For India, for example, textiles were of significant importance. They were therefore in the weaker bargaining position in

³⁶ For a description of these autonomous trade measures, see MTN.GNG/MA/W/10/Rev.2.

³⁷ For this specific statement, see GATT document MTN.GNG/NG5/W/37, para. 10.

³⁸ Zutshi 1998.

this final phase in the negotiations. The difference between India's bargaining strategies in these two negotiations exemplifies this. In the early negotiations, India offered few concessions on the TRIPs issues – a sector in which it adamantly rejected any extension of GATT competence.³⁹ However, approaching the end of the Uruguay Round, India conceded on many of the major issues in the TRIPs area. Moreover, these concessions were adopted autonomously, before any major concessions were offered from the developed states in sectors of interest to India, such as textiles.⁴⁰ This strategic move by India thus represents the most cooperative of bargaining strategies in these negotiations over the Draft Final Act.

In contrast, the United States and the EC, which had the better BATNA, adopted more confrontational strategies during this final phase of the negotiations. In particular, the United States and the EC put the entire agreement on hold, forcing the other GATT member states to wait for an agreement until they worked out their own difficulties and were satisfied with the outcome.⁴¹ In essence, they vetoed any version of the agreement that did not meet their expectations until they mutually agreed on a text. These confrontational strategies stand in stark contrast to the concessions, and attempts to move the negotiations forward, that are reflected in the strategies of developing states like India.

This variation in states' bargaining strategies in the Draft Final Act negotiations again backs up the predictions of hypothesis 2. The developed states, which had greater bargaining power in this particular interaction, adopted strategies with a mean of 0.833 (i.e., confrontational strategies), while the developing states adopted bargaining strategies with a mean of 2.986 – indicating that almost across the board, these states adopted highly cooperative bargaining strategies. Indeed, several scholars explicitly highlight the highly asymmetric distribution of concession-offering that characterized the negotiations in this final phase of the Uruguay Round. "High variance [exists] in the net trade-weighted concessions given and received: some territories, such as the United States, received deeper concessions than they gave; other territories, such as

³⁹ Ibid.

⁴⁰ For evidence of this claim, see Singh (2006: 63, 77). These concessions, as logged in the original negotiating documents, came in 1991 – and after this time, India had to push strongly for concessions in textiles. For evidence, see GATT documents MTN.GNG/TRIPS/1. This interpretation of the documentary evidence is backed up by existing scholarly analyses, based on interviews that were conducted with the negotiating practitioners (Singh 2006).

⁴¹ Barton et al. 2006.

India, South Korea, and Thailand . . . gave much deeper concessions than they received.”⁴²

Together, the analysis and illustrative examples drawn from the negotiations themselves bear out the predictions of hypotheses 1 and 2. These effects were not only present in the GATT Uruguay Round negotiations, but, as evidenced by the statistical analysis and substantive effects generated from them, they also explain a significant amount of variation in the GATT member states’ bargaining strategies.

Indeed, 94 percent of GATT member states involved in these negotiations adopted a more cooperative bargaining strategy in the negotiations over the Draft Final Act than they did in the agricultural negotiations, as predicted by hypothesis 1. The 6 percent of states who fell in the category of “exceptions” to hypothesis 1 adopted behavior that would be expected to deviate from this general trend, given the state-specific predictions of hypothesis 2. These states fell into two categories: (1) states predicted by hypothesis 2 to adopt highly confrontational strategies in the negotiations over the Draft Final Act (as in the case of the EC, Japan, and the United States), and (2) states predicted by hypothesis 2 to adopt more cooperative strategies in the agricultural negotiations because of their membership in the Cairns Group (as in the case of Australia and Canada). The few exceptions to the general trend of variation across these negotiations are therefore consistent with the within-negotiation predictions of variation derived from hypothesis 2.

Testing hypothesis 3

The statistical model reported in Table 6.1 also provides empirical support for a key implication stemming from hypothesis 3. Unlike the significant variation we can expect states to adopt in negotiations focused on absolute gains, hypothesis 3 predicts that states will adopt similar strategies in negotiations in which states focus on relative gains. If the states with a better BATNA place value on reaching an agreement in a relative gains negotiation, states are likely to adopt cooperative strategies, regardless of the costly/beneficial nature of their BATNA; if the states with a better BATNA do not place value on reaching an agreement, all states are likely to adopt confrontational bargaining strategies, regardless of their BATNA. We should therefore see no statistically significant

⁴² Barton et al. 2006: 66. See also the analysis of Finger, Reincke, and Castro (1999), upon which this argument from Barton et al. (2006) is based.

difference in the cooperative nature of the strategies adopted by states with different BATNA values in a relative gains-focused negotiation.

The interaction term BENEFICIAL BATNA X RELATIVE GAINS, which captures the effect of having a better BATNA in a negotiation in which the states were focused on relative gains, should therefore exert a statistically insignificant effect on the cooperative nature of a state's bargaining strategy. This prediction is supported by the statistical results reported in Table 6.1.

Hypothesis 3 goes further than just making a prediction that, regardless of states' bargaining power, their strategies will be similar in relative gains settings. It also makes a *dynamic* prediction about variation in the cooperative nature of states' bargaining strategies based on the degree to which the states with greater bargaining power place value on reaching an agreement. To test this dynamic effect, a second analysis is run. The results of this analysis are reported in Table 6.2.

This second model is run to test the cooperative nature of states' bargaining strategies across relative gains negotiations. As predicted by hypothesis 3, the cooperative nature of their strategies should vary based on the degree to which the states with a good BATNA to fall back on care about reaching an agreement. This second model therefore interacts a measure of the powerful states' value of reaching an agreement with an indicator highlighting a focus on relative gains in a given negotiation.

Two effects should exist if the predictions of hypothesis 3 are correct. First, an interaction term which combines (1) the fact that the powerful states place value on reaching an agreement, with (2) the fact that the bargaining states focus on relative gains, is included in the model. This variable captures the effect that the interaction of these two factors has on the cooperative nature of states' bargaining strategies. We should therefore see a positive effect associated with the RELATIVE GAINS X POWERFUL STATE VALUES AGREEMENT interaction term. Second, the RELATIVE GAINS component term from this interaction captures the effect that being in a relative gains setting will have on the cooperative nature of a state's bargaining strategy when the powerful states do not care about reaching an agreement (i.e., when the POWERFUL STATE VALUES AGREEMENT variable takes on a value of zero). This component term should therefore exert a negative effect on the cooperative nature of states' bargaining strategies.

These predictions are supported by the results reported in Table 6.2. The RELATIVE GAINS X POWERFUL STATE VALUES AGREEMENT interaction term exerts a positive effect on the cooperative nature of states'

Table 6.2. *Closer examination of hypothesis 3*

Relative gains x powerful state values agreement	1.383*
(H3: $\beta > 0$)	(.520)
Relative gains	-2.390*
(H3: $\beta < 0$)	(.420)
Beneficial BATNA	-.748*
	(.088)
Issue linkage structure [†]	15.390*
	(1.316)
Powerful state values agreement	.006
	(.171)
ln GDP	-.074*
	(.018)
Trade dependence	.169*
	(.030)
Final negotiating phase	3.253*
	(.423)
Cut1	-3.907
	(.899)
Cut2	1.682
	(.831)
Cut3	3.928
	(.841)
N	1192
level 2 units	16
log likelihood	-919.900
Variance of level 2 random effects	.857
	(.181)

*Indicates $p < .05$

[†]This coefficient might, at first, appear unreasonably large for an ordered logit model. However, it is large because of the small range of this variable. When exponentiated out in the context of its actual range, the substantive effect is not unreasonably large. This effect is described in the text.

bargaining strategies and the RELATIVE GAINS component term exerts a negative effect on the cooperative nature of states' strategies.

Figure 6.1 helps to illustrate these effects in a more intuitive way. It shows the effect associated with the more powerful states not placing value on reaching an agreement versus when they do place value on doing

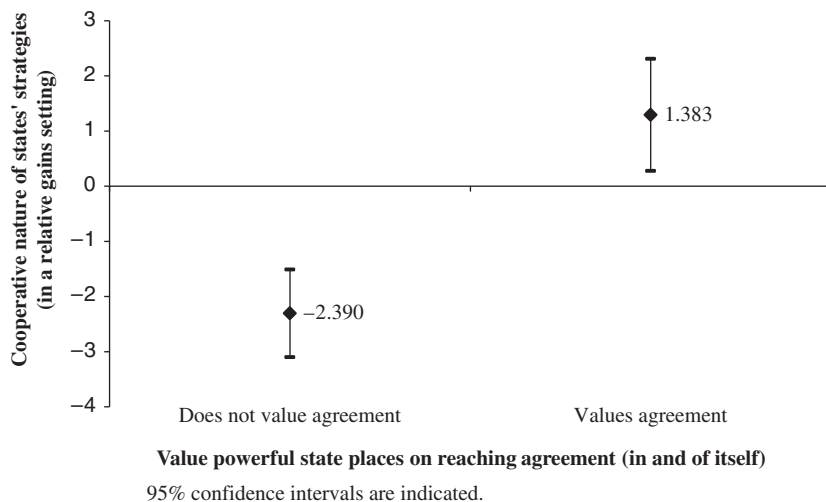


Figure 6.1 Effect of powerful state valuing (versus not valuing) agreement in a relative gains setting in the GATT

so. A negative, statistically significant effect occurs when the coefficient and its 95 percent confidence interval both fall below zero. Observing such a negative effect indicates that states are likely to adopt a less cooperative bargaining strategy under the specified set of conditions. A positive, statistically significant effect occurs when the coefficient and its 95 percent confidence interval both fall above zero. Observing such a positive effect indicates that states are likely to adopt a more cooperative bargaining strategy under the specified set of conditions.

This figure confirms the predictions of hypothesis 3. In relative gains negotiations in which the powerful states do not value reaching an agreement, all states are likely to adopt more confrontational bargaining strategies, as illustrated by the negative effect associated with this type of bargaining setting. In contrast, in relative gains negotiations in which the powerful states do place value on reaching an agreement, all states are likely to adopt more cooperative bargaining strategies, as illustrated by the positive effect associated with this type of bargaining setting.

Dynamics of hypothesis 3: illustrative empirical examples. The effect of powerful states' valuation of reaching an agreement in the relative gains negotiations of the Uruguay Round can also be seen by analyzing the cases themselves. Take the example of the dispute settlement and

TRIPs negotiating groups. The negotiating group dealing with the dispute settlement mechanism was characterized by a significant focus on relative gains, due to the fact that gains or losses regarding the construction of the dispute settlement process would directly affect the ability of states (and their industries) to defend themselves against the “unfair” trading practices of other states – many of which could drive them out of the market. Despite this focus on relative gains, all states placed value on reaching an agreement in these negotiations because they all wanted to see an improvement over the current (and largely ineffective) dispute settlement process.

In contrast to the dispute settlement negotiating group, some relative gains negotiations were characterized by the fact that the states with greater bargaining power did not place value on reaching an agreement. Indeed, this was the case with the TRIPs negotiating group. The developing states, which clearly were better able to live with the status quo level of fairly loose IPR protections, had little (if any) interest in solidifying IPR norms in a GATT agreement. Doing so was not only costly for their own industries’ ability to develop the technological capability to effectively compete in the international market, but it would also hinder their ability to sidestep IPR protections for reasons of national security. This was particularly relevant to the issue of patent rights, where circumventing pharmaceutical patents in order to manufacture cheap, generic drugs was viewed by developing states like Brazil and India as central to their ability to deal with public health crises.

Based on the predictions of hypothesis 3, we would expect all states to have adopted fairly cooperative strategies in the relative gains, dispute settlement negotiating group, but fairly confrontational strategies in the relative gains, TRIPs negotiations. The cases bear out these predictions. Consistent with hypothesis 3, the dispute settlement negotiations were characterized by the adoption of cooperative strategies by all states, while the bargaining strategies in the TRIPs group were largely confrontational on all fronts.

In the dispute settlement negotiating group, states facing a beneficial BATNA⁴³ had a cooperative strategy valued, on average, at 2.636, and states facing a costly BATNA⁴⁴ had similarly cooperative

⁴³ Having a “beneficial BATNA” here is defined for states with a beneficial BATNA coded either 2 or 3.

⁴⁴ Facing a “costly BATNA” is defined here as having a beneficial BATNA coded either 0 or 1.

strategies – valued, on average, at 2.932. Both fell very close to the most cooperative category of bargaining strategies (category 3).

To illustrate this more concretely, one of the most important issues in these dispute settlement discussions revolved around the method that would govern the adoption of panel reports, making the ruling of the dispute settlement panel official in the GATT Council. Most states wanted to ensure that the party that was ruled against in a dispute could not block the adoption of this report. However, several states adamantly defended the principle of “traditional consensus” in these negotiations – thus including the parties to the dispute in the process of panel report adoption (or rejection). Rather than reaching a stand-off on this central issue, however, as was the case in many other negotiating groups, states on both sides gave some ground to help move the process toward agreement. The states defending traditional consensus conceded when they realized that it was not likely to be accepted. They then adopted a compromise position, pushing instead for the establishment of an appellate process. Such a process would still help to protect states’ sovereign interests, while at the same time preventing a single state from being able to block the adoption of rulings made against them. States on the other side saw the value of this appellate process, and agreed to see it through. On both sides, concessions were made, allowing an impasse to be overcome on what was a very hot and divisive issue in these negotiations.

In contrast to the cooperative strategies adopted by almost all states in the dispute settlement negotiations, the TRIPs negotiating group was characterized by the adoption of confrontational strategies by all states. States facing a beneficial BATNA⁴⁵ had a cooperative strategy valued, on average, at 0.116 in this negotiating group, and states facing a costly BATNA had similarly confrontational strategies – valued, on average, at 0.167. Both fell very close to the most confrontational category of bargaining strategies (category 0).

Evidence of these trends can again be seen in the actual strategies the developing and developed states adopted in this negotiating group. The developed states, which faced a costly BATNA in these TRIPs negotiations (due to the lack of IPR protection by the developing states), adopted strategies characterized by demands for concessions. No real concessions were offered by these states. Instead, they pushed hard to win concessions from their developing country opponents. On the other side, the developing states refused to give in and make these concessions. Many even

⁴⁵ Again, this is defined by states with a beneficial BATNA coded either 2 or 3.

attempted to extract concessions from the developed countries, arguing that TRIPs issues should not even be discussed in the Uruguay Round.⁴⁶ By arguing that they would not even be willing to discuss these issues, they in essence “vetoed” the agreement on TRIPs during this 1986–90 phase, forcing the developed states pushing for further international cooperation in the area of intellectual property rights to accept that this was not moving forward – at least in this early phase of the Uruguay Round.

Overall, the statistical analysis, as well as a closer look at some of the negotiations themselves, bear out the predictions of hypotheses 1 through 3. These effects not only were present in the GATT Uruguay Round negotiations, but, as evidenced by the substantive effects highlighted throughout the empirical discussion, they also explain a significant amount of the variation in the GATT member states’ bargaining strategies. The nature of the issues on the bargaining agenda, states’ bargaining power, and whether or not states focus on absolute or relative gains in a given negotiation therefore have important effects on states’ bargaining behavior in negotiations over international trade.

Why not change the rules? The single undertaking

As shown throughout the chapter, the rules of the game shaped the bargaining strategies of the GATT member states in important ways throughout the Uruguay Round. However, while the empirical evidence shows that this was clearly the case, the developed states – which were significantly disadvantaged in the negotiations important to them – did try to *change* these rules to better suit their interests. Despite the fact that the GATT’s procedural rules limited states’ ability to add or remove issues from the official bargaining agenda, and contextual factors limited states’ ability to use coercive threats to change the status quo no-agreement outcome,⁴⁷ these limitations did not prevent the developed states from working to push through changes in the structure of the Uruguay Round. By getting the organizational structure of the negotiations changed, both the issue linkage structure and the relevant no-agreement outcome changed. The end result was a shift in the contextual rules governing the negotiation.

⁴⁶ See the text of GATT document MTN.GNG/12.

⁴⁷ See the discussion at the beginning of the chapter for more on these procedural and contextual constraints on states’ ability to adopt rule-changing strategies.

By late 1990, it was clear that the developing states were not going to give in on issues of importance to the developed states – TRIPs, TRIMs, and trade in services.⁴⁸ This was reflected in the strategies adopted in these negotiating groups – with many developing countries stating that they had no intention of signing on to these agreements.⁴⁹

To alter this outcome, the United States, the EC states, and Canada began to push for what is referred to as the “single undertaking” – the fact that for any state to benefit from agreement on some issues, it would have to agree to accept the obligations of *all other issues* agreed in the Round. This idea that all aspects of the agreement must be accepted (or rejected) together was a change from the current GATT set-up. Since the Kennedy Round, states were able to take on “differential obligations.” They could sign on to some aspects of the agreement, but not others. For example, some states chose to sign on to the Codes agreed in the Tokyo Round, taking on additional obligations (and receiving additional benefits in return), while many others did not. Those that did not, however, could still benefit from GATT principles of non-discrimination and most-favored-nation (MFN) treatment in the other sectors covered by the GATT. The single undertaking would end this possibility. In order to benefit from the liberalization of trade in sectors such as textiles, natural resource-based products, and tropical products, the developing countries would have to sign on to the

⁴⁸ Note that this lack of concession-offering is consistent with the fact that the developing states had a more beneficial BATNA, while at the same time, the negotiations were characterized by a focus on relative gains and the developing states placed little value on reaching an agreement in these negotiating groups. The fact that they were unwilling to offer concessions in these negotiations is therefore consistent with the predictions of hypothesis 3. The issues at stake in these negotiating groups also tended not to be differently valued, further adding to the lack of incentive for the developing states to offer concessions, consistent with the predictions of hypothesis 1.

⁴⁹ For evidence of this strategy, see the developing country statement summarized in GATT document MTN.GNG/12, para. 10, and the scholarly analysis of these negotiations conducted by Barton et al. (2006: 65). Specifically, GATT document MTN.GNG/12, which summarized the July 1988 meeting of the GNG, reports that, “In relation to the negotiations on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, a statement was made on behalf of developing countries to the effect that proposals for the negotiation in GATT of standards for the protection of intellectual property rights and that such standards should be enforced through the GATT dispute settlement mechanism went beyond the mandate agreed in Punta del Este. GATT’s proper concern was with the liberalisation of trade in goods crossing national boundaries, and it was not the proper forum for the elaboration of substantive standards” (GATT document MTN.GNG/12, para. 10).

TRIPs, TRIMs, and services agreements.⁵⁰ Instead of being considered in separate negotiating groups, all of these issues thus became linked together as a package deal that had to be negotiated and accepted as a whole.⁵¹

Regardless of their efforts, however, the United States, the EC, and Canada could not alter the structure of the Uruguay Round on their own. Procedural limitations of the GATT still prevented them from doing so. The market power they wielded, however, did provide them with significant influence over the decisions of the GATT Secretariat – the institution that did have this procedural power.⁵² Responding to the interests and pressure from the United States, the EC, and Canada, Arthur Dunkel agreed to embed the idea of the single undertaking within the Draft Final Act that he proposed in December 1991. By doing so, the Draft Final Act he put forth changed the rules governing the Uruguay Round negotiations, linking all issues together as a package deal for consideration in the negotiations that followed. This rule change was consistent with the interests of these developed states. The United States and the EC also added a power politics move to this rule change, arguing that once the agreement was reached, they would withdraw from the GATT. This would remove the benefits conferred by GATT membership from any state that did not

⁵⁰ Steinberg 2002; Barton et al. 2006. The single undertaking also focused on other key issues such as safeguards, the Codes, subsidies, etc. I simply focus on the most intuitive ones here (TRIPs, TRIMs, and GATS) in order to assist in presenting a simple, substantive illustration explanation of the theoretical processes highlighted in the theoretical chapters.

⁵¹ Note that the Punta del Este Declaration (1986) launching the Uruguay Round did have language referencing a “single undertaking” approach: “The launching, the conduct, and the implementation of the outcome of the negotiations shall be treated as parts of a single undertaking.” However, this terminology was also present in the Tokyo Round declaration – a negotiation which did *not* end with an actual “single undertaking” in the sense that all parts of the agreement had to be accepted as a whole. Indeed, the Tokyo Codes were signed by only a handful of states while the others were still able to sign on to other parts of the Tokyo Round Agreement. The meaning of this single undertaking language in the declaration launching the Uruguay Round was thus understood very differently than the new approach pushed by the United States and the EC at the end of the negotiations. Referring specifically to the separation of services from the other negotiations, India describes its objection to the “single undertaking” approach being pushed by the United States and the EC by clearly defining what the original language in the declaration stated – that it was intended to indicate the parallel, *temporal* nature of these negotiations taking place together, not to any legal or procedural linkages (GATT document MTN.GNS/W/4, para. 4).

⁵² See Barton et al. (2006: 65–6) for a specific argument that it was the market power wielded by the United States and EC that helped them to push through the single undertaking, and eventual agreement in the Uruguay Round.

sign on to the new “package deal” agreement. Only if they signed on to the new agreement could they receive the benefits of most-favored-nation treatment in the sectors agreed in the Uruguay Round, as well as in the areas already covered by the GATT.⁵³

The effect of this change in the rules of the game is clear in the analysis of the Draft Final Act negotiations presented throughout the chapter. While one of the effects of this rule change was to alter the issue linkage structure, the most important effect from the developed states’ perspective was that it shifted the bargaining power in their favor across all issues. This was most especially the case on the TRIPs, TRIMs, and services issues, where before they had been in the weaker bargaining position. No longer did the developing countries place little to no importance on reaching an agreement on TRIPs, TRIMs, and services. These issues were now part of an overall package deal, which included market access issues in textiles, tropical products, and natural resource-based products. The no-agreement alternative on TRIPs, TRIMs, and services was now not only characterized by remaining at the status quo on those issues, but also remaining at the status quo on the market access issues in sectors of central importance to the developing countries’ economies. The BATNA associated with no agreement on TRIPs, TRIMs, and services therefore became significantly more costly for the developing states. Indeed, given the central importance of the market access issues to the developing countries’ economies, their BATNA in this final phase of the negotiations was now worse than that of the developed countries. As India’s ambassador to the GATT described, the developing countries were now in much greater need of an agreement that linked together all of these issues than were the developed countries, and were thus willing to make concessions on issues on which before they had been unwilling to do so. “The developing countries were keen to conclude the Round, and for that purpose, were prepared to make concessions to the developed countries in new areas of services and TRIPs against better access to developed countries’ markets in the area of trade in goods.”⁵⁴

The effect of this shift in bargaining power on TRIPs, TRIMs, and services is evident in the concessions exchanged in the negotiations over the Draft Final Act. Indeed, these were the issues on which the developing countries offered significant concessions – undertaking substantial obligations in these sectors. In return, they received some concessions on issues such as trade in textiles, natural resource-based products, and

⁵³ Steinberg 2002; Barton et al. 2006.

⁵⁴ Zutshi 1998: 45.

tropical products. However, the distribution of concessions across these issues was highly asymmetric – consistent with the variation in bargaining power between the developed and developing states under this single undertaking set-up. Developed states received significantly more concessions than they gave, while developing states gave significantly greater concessions than they received.⁵⁵

The relation between playing by the rules and changing them

Overall, this discussion of the single undertaking and the rule-changing strategies that underpin the rules embodied in the Draft Final Act demonstrates that trying to analyze the effects of the rules of the game is a complex, and often “messy,” task. Even though the GATT member states were largely constrained by the rules of the game, the United States, the EC, and Canada still adopted back-door strategies that effectively changed them. The way that this occurred, however, and the interaction between the rules of the game and states’ bargaining behavior – with regard to both rule-compliant and rule-changing strategies – highlights the dynamics that we expect to characterize international negotiations.

First, the rules of the game did largely constrain the bargaining behavior of the GATT member states in the Uruguay Round negotiations. In the negotiating groups, and in the negotiation over the Draft Final Act, states adopted bargaining strategies in response to those rules. The statistical analyses presented earlier in the chapter demonstrate this effect, showing that their strategies followed the predictions laid out in Chapter 3 regarding variation in states’ rule-compliant bargaining behavior. Indeed, if the original rules of the game did not shape states’ bargaining strategies in the ways predicted by hypotheses 1 through 3, the United States, the EC, and Canada would not have needed to try to change the rules of the game. They could have achieved their interests on TRIPs, TRIMs, and services without having to push the single undertaking on the developing countries.

This is important to note because this strategy was fairly costly for the developed states. It left the developing countries extremely embittered about both the outcome of the Uruguay Round and the power play that underpinned the push for the single undertaking, which shaped that outcome. The TRIPs Agreement that was formed as a part of the Uruguay Round’s single undertaking became a highly contentious issue – particularly in critiques of unfettered global free trade that began at the

⁵⁵ Finger, Reincke, and Castro 1999; Barton et al. 2006.

end of the 1990s.⁵⁶ This carried all the way into 2001, when the developing GATT member states (now WTO member states) argued that the international trade regime absolutely had to be more sensitive to the needs of developing countries in the next multilateral trade round. Some developing countries even went so far as to argue that the TRIPs Agreement itself should be renegotiated in a way that made it more favorable to developing countries, with the most extreme states pushing for it to be repealed altogether.⁵⁷ The result of the 2001 Doha negotiations was a declaration stating that developing countries could circumvent intellectual property rights under certain conditions.⁵⁸ The bitterness brought about by the rule-changing strategies underpinning the single undertaking therefore carried with it real consequences for the developed states. Adopting these rule-changing strategies had not been costless. However, the United States, the EC, and Canada needed to do so because they could not achieve their interests under the current bargaining rules. They were not otherwise able to force the hand of the developing states regarding the TRIPs, TRIMs, and services issues.⁵⁹

However, this was also the case for the developing states attempting to achieve their interests in the negotiating groups dealing with textiles, agriculture, tropical products, and natural resource-based products. Why did we see the developed states effectively adopt a rule-changing strategy, shifting the rules of the Uruguay Round to suit their interests, but not the developing states? The answer lies in the difference in material power between these two groups of states, as predicted in the discussion of rule-changing strategies in Chapter 4. Indeed, it was the significant

⁵⁶ Barton et al. 2006.

⁵⁷ Barton et al. 2006; Odell and Sell 2006.

⁵⁸ For discussions of why the developed countries agreed to this declaration, see Odell and Sell (2006).

⁵⁹ This “power-play” analysis, while consistent with most descriptions and analyses of the Uruguay Round, does differ from Wolfe’s (2009) discussion of the overall concept of a single undertaking. While Wolfe analyzes it in the context of the Doha Round, his analysis is potentially relevant here. He analyzes it as “issue linkage” – categorizing this as an integrative bargaining strategy. Yet linkages can also be used as a concession-extracting tactic leading to bargaining failure, when the linkage removes the zone of agreement because the issues are not differently valued (Sebenius 1983; Morgan 1990) or adds new veto players that block agreement (Lohmann 1997). In the case of the Uruguay Round, the actual linkage itself, as a contextual rule that structures the game, did in fact bring about an agreement. It is therefore consistent with Wolfe’s (2009) argument in that regard. However, the rule-changing issue linkage *strategy* that brought it about was highly coercive in nature. It is this difference in looking at the effects of *playing* by that issue linkage structure, versus the actual *strategy* that brought it about that leads to the difference in interpretation.

market power (i.e., material influence) wielded by the United States and the EC, along with Canada, that allowed these actors to push the GATT Secretariat to adopt the single undertaking approach.

The dynamics underpinning the rule-changing strategies in the Uruguay Round negotiations therefore follow the predictions laid out in the preceding chapters: the United States, the EC, and Canada – states that were weak in terms of their bargaining power on their key issues of interest, but that also had the material power necessary to change the rules of the game – are the states that did so. These new rules of the game governed the negotiations of the Draft Final Act.

Summary of the Uruguay Round negotiations

Overall, the dynamics of the Uruguay Round provide additional empirical support for the predictions regarding the relationship between the rules of the game and the bargaining strategies states adopt. In these negotiations, the GATT member states' bargaining strategies were consistent with the rules governing each of the negotiating groups and the Draft Final Act. However, the reality of international negotiations is never quite that simple. The fact that states are largely constrained by the rules of the game does not mean that they will never try to better their negotiating stance by changing those rules – particularly when they are disadvantaged in some way by the current rules of the game.

The argument presented in this book makes predictions about when and why this will occur, and these dynamics characterized the Uruguay Round negotiations. It was the combination of weakness in terms of bargaining power (as defined by the costly nature of the BATNA) and strength in terms of material power (in this case, defined by states' market power) which led to the rule-changing efforts of the United States, the EC, and Canada being successfully adopted.

The analysis in this chapter therefore provides additional support for the theoretical arguments presented in Part I of the book in a bargaining setting very different from that of the internal European Union negotiations. It therefore helps to highlight the generalizability of the argument and predictions, as well as to show how extremely complex, multi-phase, multilateral negotiations can be organized and analyzed using the techniques laid out in this book.

Changing the rules in climate change negotiations

Chapter 4 laid out a theoretical argument specifying when and why states will choose to play by the rules in a given negotiating context and when they will, instead, choose to change those rules. Identifying one central way in which states can change the bargaining rules: hypotheses were derived regarding when and why a state will adopt a rule-changing, issue linkage strategy. These hypotheses predict that all states are more likely to adopt this type of strategy when the current issues on the bargaining agenda are not differently valued by states with opposing bargaining positions (hypothesis 4), and that a particular state is likely to use this type of strategy when it faces a costly BATNA and has the material capability necessary to do so (hypothesis 5).¹ This chapter tests these empirical predictions by analyzing recent international climate change negotiations – a topic that is both substantively and theoretically important in international bargaining today.

In 1992, the states of the international system recognized that they needed to take cooperative steps to deal with climate change issues. To do so, they adopted the UN Framework Convention on Climate Change (UNFCCC), which has near universal membership. This Convention entered into force on March 21, 1994, and established the Conference of the Parties (COP) as its key decision-making body. These conferences are composed of representatives from all parties to the UNFCCC and are held regularly. The negotiations within these conferences take place in a variety of different forums, including general plenary sessions, meetings of the Subsidiary Body on Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI), various issue-specific Contact Group meetings, and a high-level plenary session.

¹ Note that hypothesis 5 predicted that either type of rule-changing strategy could be adopted. In a setting like environmental climate change negotiations, where coercive threats are unlikely to be credible, we would expect the rule-changing strategies these states adopt to be the issue linkage kind.

These negotiations are not only politically important and deal with multiple complex issues, but they are also unconstrained – providing states with the opportunity to adopt rule-changing issue linkage strategies. While there are clearly institutional structures in place to organize the UNFCCC meetings and discussions, these structures do not stop states from being able to link issues to (and unlink them from) the negotiations. Issue linkage is available as a potential bargaining strategy in these negotiations. The multiple negotiations in each of these COPs therefore provide a useful setting to test the predictions regarding when a state is (or is not) likely to adopt an issue linkage rule-changing bargaining strategy. Moreover, because they involve the same set of states dealing with the same overarching issue area, studying variation in states' bargaining strategies across these negotiations also allows us to hold many potentially mitigating factors constant in the analysis.

Some of the most important international steps to combat climate change were taken in 1997 in the agreement of a protocol to the UN Framework Convention on Climate Change: the Kyoto Protocol. The Kyoto Protocol set binding commitments for developed countries to reduce their overall greenhouse gas emissions by at least 5 percent below 1990 levels in the period from 2008 to 2012. To achieve this overall goal, different groups of states took on different emission reduction requirements: the EU states took on a commitment to reduce their emissions by 8 percent below 1990 levels, the United States by 7 percent, Japan by 6 percent, and some countries such as Iceland and Australia were allowed to increase their emissions during this period. It is important to recognize these steps that were taken in the Kyoto Protocol – not only because they represent some of the most significant international steps taken to deal with climate change to date – but also because the end of the Kyoto Protocol's commitment period was quickly approaching at the time of the climate change negotiations analyzed in this chapter.

Steps were first taken at the [Bali \(2007\)](#) conference to lay out a plan for dealing with the next phase of the global climate change framework. The plan, labeled the Bali Action Plan (BAP), called for negotiations over the next two years, with an agreement to be reached in the Copenhagen COP in 2009. The negotiations in these two conferences are analyzed in this chapter. These negotiations were designed to reach an agreement on two main “tracks” for the second commitment period: (1) extending

and expanding the Kyoto Protocol commitments, and (2) creating a new agreement on long-term cooperative action (LCA) by *all* states. However, the Copenhagen negotiations in 2009 failed to produce a concrete result.

These conferences therefore capture different facets of the preparation for the post-2012 climate change regime, and they also varied in their key characteristics. The [Bali \(2007\)](#) negotiations were largely a “success,” creating an agreement on the Bali Action Plan, which laid out the steps for establishing a post-2012 climate change regime. The [Copenhagen \(2009\)](#) negotiations, however, were not as successful. Despite the fact that states aimed to reach an agreement on the post-2012 process by the end of this 2009 conference, they failed to do so. Variation in the resulting outcomes of these negotiations is therefore captured by examining the multiple negotiations within these two COPs.

This chapter proceeds in two main parts – one theoretical and one empirical. The first part of the chapter derives case-specific predictions from the hypotheses put forth in Chapter 4 regarding what strategies we would expect states to adopt in these climate change negotiations. The plausibility of these predictions is illustrated through a discussion of the [Cancún \(2010\)](#) climate change negotiations. The empirical part of the chapter then uses statistical methods to analyze thirteen separate bargaining interactions that took place within the Bali and Copenhagen conferences. It complements these statistical analyses with a detailed case study highlighting the predicted dynamics and effects at work in the final days of the negotiations in the Copenhagen conference.

The data for these analyses comes from an extensive review and coding of webcasts of the meetings that took place in each conference, along with a review of reports from the International Institute for Sustainable Development’s Reporting Service that keep a detailed log of the statements and events for each day of each COP. Various relevant news sources are also used, including an analysis of the audio recording of the negotiations at the Copenhagen COP that was leaked to *Der Spiegel*,² and relevant diplomatic correspondences released on Wikileaks. Overall, the empirical evidence presented in this chapter supports the theory regarding when and why states choose to adopt rule-changing, issue linkage bargaining strategies.

² For those who are interested, a summary of this leaked tape is available on *Der Spiegel*’s website: www.spiegel.de/international/world/the-copenhagen-protocol-how-china-and-india-sabotaged-the-un-climate-summit-a-692861.html.

Choosing an issue linkage strategy

This chapter is designed to explain when and why a state chooses to adopt a rule-changing, issue linkage bargaining strategy, instead of simply following the set-up of the current agenda. The dependent variable that this chapter seeks to explain is therefore a dichotomous variable coded 1 if a state adopted an issue linkage strategy in a given phase of a negotiation process, and 0 otherwise. Because the analysis focuses on issue linkage rule-changing strategies, this variable is coded 1 if a state (1) added a new issue to the negotiation, (2) took steps to negotiate a particular issue (or set of issues) separately from the current negotiation, or (3) took steps to remove an issue from the negotiation. All three strategies represent an attempt to change the issue linkage structure in some way.

Explaining states' strategic choice to use a rule-changing, issue linkage bargaining strategy, this chapter examines the effects of (1) the issue linkage structure, and (2) a state's power – both in terms of its bargaining power and its material power. Before analyzing their effects, this section describes how we can think about what these factors mean in the context of environmental climate change negotiations.

The issue linkage structure: empirical measure and predictions. The conceptualization and measurement of the “issue linkage structure” of a bargaining interaction has been described, in detail, throughout the previous empirical chapters. It captures the degree to which the issues on the table are “differently valued” by a given set of states. Issues are differently valued when states with opposing interests place most value in winning on different issues on the bargaining agenda. When they, instead, place most value in winning on the same issue (or issues), that particular issue linkage structure is characterized by issues that are not differently valued. As shown by the current literature, linking together issues that are differently valued creates a larger zone of agreement, while the linkage of issues that are not differently valued decreases the zone of agreement, and potentially removes it altogether.³ A measure of the average size of the zone of agreement created by any given set of issues – a measure that is comparable across different bargaining interactions – is therefore used to proxy the degree to which any given set of issues is differently valued by a particular group of states. The appendix lays out a detailed

³ Tollison and Willett 1979; Sebenius 1983; Morgan 1990.

description of how this variable is coded in the context of these climate change negotiations.

Analyzing the effect of this key contextual rule, Chapter 3 predicted (and Chapters 5 and 6 showed) that states' bargaining behavior will respond to this issue linkage structure in important ways. States are less likely to offer concessions when the issues on the agenda are less differently valued, making an agreement less likely to be reached (hypothesis 1). Because they are unlikely to achieve an agreement when bargaining over issues that are not differently valued, states are likely to adopt an issue linkage strategy to try to change the set of issues being negotiated, with the goal of helping to bring about an agreement (hypothesis 4).

To illustrate this logic, consider the COP negotiations in [Cancún \(2010\)](#). The early days of this conference were characterized by issues that were not differently valued. Specifically, the agenda included actual emission reduction requirements – in hard and fast numbers – for both developed and developing countries. Developed countries wanted relatively equal burden sharing in emissions reductions between developed and developing countries, and therefore wanted emission reduction requirements to be placed on developing countries. In contrast, developing countries wanted the burden to be taken on by developed countries, with significantly higher reduction targets for those developed countries than for themselves.

This “emission reduction requirements” issue was one of the most important issues to both developed and developing states. The process of reducing emissions is costly for industries to implement. Whatever levels were agreed between the two groups of states would therefore have significant implications for their relative economic competitiveness on the world market. Developed countries such as the United States were concerned about their ability to remain competitive against developing states such as India and China if these more advanced developing states were not required to take on the same emission reduction burdens as the developed countries. They would be able to gain what many developed states considered to be an “unfair” economic advantage in the realm of international trade.⁴ On the other side of this issue, developing countries were

⁴ This position is represented throughout the statements made in the negotiations themselves. For example, in the 2007 COP, from which the 2010 negotiations were a carry-over, the United States made a statement directly linking emission reduction commitments to issues of trade and economic competitiveness. As the US representative argued, “We also believe it is important to look at the economic and social consequences of the various response strategies [to the four building blocks of the convention: mitigation, adaptation,

concerned with their ability to continue to successfully develop economically if they were faced with high emission reduction burdens, placing high costs on their more “fledgling” industries.⁵

This issue was therefore extremely important to the interests of states on both sides, and developed and developing countries were highly inflexible in their positions. Despite the fact that there were several other issues on the table in these negotiations, the focus on this one issue, in particular, meant that the overall issue linkage structure was characterized by issues that were not differently valued. This type of issue linkage structure fosters the adoption of non-cooperative bargaining strategies and is therefore likely to lead to an inability to reach an agreement.⁶

The argument in Chapter 4 predicts that states likely had an incentive to change the bargaining agenda in these negotiations. Doing so could bring about an issue linkage structure that was characterized by issues that *were* differently valued, fostering an exchange of concessions and allowing a mutually beneficial agreement to be reached. We would therefore expect to see states adopting issue linkage strategies in these negotiations (hypothesis 4).

This effect is clear in the strategies states adopted in the Cancún climate change negotiations. In response to the non-differently valued nature of the issues, states adopted issue linkage strategies to alter the bargaining agenda. The most important issue linkage strategy was adopted

technology, and finance]. I think there could be unintended consequences, not only from mitigation, but also in actions we take on adaptation – certainly technology and financing. We also hope that the process will emphasize the need for an effective, equitable, and practical outcome and also provide the opportunity for input from initiatives and other processes outside the convention such as the ongoing ... major economic processes” (statement in COP meeting of December 3, 2007). Note: the United States’ overall statement begins at 1:14:40 in the webcast of this meeting. This webcast is available on the UNFCCC website: http://unfccc.int/meetings/bali_dec_2007/meeting/6319.php.

⁵ Evidence of the developing countries’ concern for issues of development can again be seen in the Bali COP. As the representative of Algeria argued, “Distinguished delegates, to launch such process, we need to [have the] developed world and the developing world have the same level of technologies and at least [the same level of] development” (Statement of COP on December 3, 2007, quote transcribed from archived webcast of the meeting). Argentina made a similar statement, “We are optimistic that the UNFCCC, the Kyoto Protocol, and the future agreement can likewise set ambitious goals, deliver technology transfer, and provid[e] the financing necessary to support our climate change goals while ensuring equitable and sustainable development for all” (Statement of COP on December 3, 2007, quote transcribed from archived webcast). Note: Algeria’s statement begins at 1:18:10 of the webcast, and Argentina’s begins at 1:46:55. The webcast is available on the UNFCCC website: http://unfccc.int/meetings/bali_dec_2007/meeting/6319.php.

⁶ See the logic underpinning hypothesis 1 in Chapter 3.

by the Mexican presidency. After much back and forth, and little progress on the emissions reduction issue, Mexico drew on its role as president of this COP and dropped the issue from the bargaining agenda altogether. Questions about the actual reduction numbers were therefore put off until the next COP.⁷ Doing so removed a central source of impasse from the Cancún negotiations, allowing an agreement to be reached on the remaining issues on the table. Developed countries agreed to contribute \$100 billion in new aid to the Green Climate Fund through 2012, and to increase this amount to \$100 billion a year by 2020. This fund would help developing countries deal with adverse effects of climate change such as floods and drought, as well as help them reduce greenhouse gas emissions. In return, developing countries – including China, India, and other rising developing country powers – committed themselves through “statements of intent” to reduce their emissions (although they did not commit to actual reduction targets).

To test whether or not this effect is actually part of a more general pattern in climate change negotiations, a variable labeled *ISSUE LINKAGE STRUCTURE* is included in the following analysis. This variable captures the degree to which the issues on the negotiating agenda were differently valued prior to states’ adoption of rule-compliant or rule-changing strategies.⁸ It is coded based on the statements made in the actual negotiations themselves, which are available in archived webcasts.⁹ Larger values of this measure indicate that a particular issue linkage structure was characterized by issues that were more differently valued, all else constant. As predicted by hypothesis 4, and illustrated by the Cancún negotiations, a state is likely to adopt a rule-changing, issue linkage strategy when the issues on the bargaining agenda are not differently valued – and therefore at *smaller* values of this variable. This variable is therefore expected to exert a *negative and statistically significant* effect on the likelihood that any given state will adopt a rule-changing, issue linkage strategy.

⁷ Hertsgaard 2011.

⁸ Analyzing the agenda *before* any strategies are adopted and thus *before* any changes are made by the negotiating states is key to avoiding problems of endogeneity.

⁹ The Bali conference webcasts can be found at this website: www.un.org/webcast/unfccc/, and the Copenhagen conference webcasts can be found at this website: http://unfccc4.meta-fusion.com/kongresse/cop15/templ/archive.php?id_kongressmain=1&theme=unfccc. This information was supplemented with a review of the daily logs of the climate change negotiations recorded in the *Earth Negotiation Bulletin* kept by the International Institute for Sustainable Development. Volume 12 Nos. 344–354 of the *Earth Negotiation Bulletin* log the negotiations in Bali in 2007, and Volume 12 Nos. 449–459 log the negotiations in Copenhagen in 2009.

A costly BATNA and material power: empirical measures and predictions. Chapter 4 also argued that states facing a costly no-agreement outcome have the greatest incentive to change the rules of a negotiation. Having greater material capabilities provides them with the ability to do so. When these two factors are combined – that is, when a state faces a costly BATNA and has greater material capabilities – we are therefore likely to see that particular state adopting a rule-changing strategy (hypothesis 5). Adopting such a strategy allows that state to improve its bargaining position – helping it to win concessions it might not have been able to achieve otherwise, due to the fact that opposing states were unwilling to make concessions when they had a significantly better BATNA than it did.

The logic of this prediction is present in the illustrative Cancún example described above. Mexico, which was hosting the Cancún negotiations, had a very high cost associated with an inability to reach an agreement – the failure to reach an agreement would be seen as a failure of its leadership during this round of negotiations. This is exactly the type of criticism that was leveled at Denmark and the EU in the aftermath of the “failure” at Copenhagen in 2009. The Mexican representation’s BATNA was therefore costly, and it had a strong interest in avoiding it. However, developed and developing countries were both unwilling to offer concessions on a key issue in the discussions – the issue of binding emission-reduction requirements. Each side wanted the other side to concede and accept reduction requirements, but each side had its own beneficial BATNA to fall back on regarding this issue. Absent an agreement, states would not have to impose costly emission-reduction requirements on their industries, allowing them to remain competitive against states on the other side. They were therefore each inflexible and unwilling to concede on the issue, and bargaining impasse resulted.¹⁰

Mexico’s sidelining of this issue served to remove the highly beneficial BATNA each side had regarding this issue from the overarching discussion. Both developed and developing countries’ BATNAs were therefore not as beneficial, overall, when dealing with the remaining issues, such as adaptation, non-legally binding commitments, a climate change support fund, issues related to forestry, and more. This helped to make them more flexible in the discussions over these remaining issues. The fact that it was *Mexico* that adopted a rule-changing issue linkage strategy to remove this

¹⁰ As noted above, this is a key reason why the issues, overall, were not differently valued.

issue of emission-reduction requirements is consistent with the incentives associated with its costly BATNA. Doing so allowed it to improve its bargaining position significantly over the position it originally had when the emission reduction issue was included in the discussions.

Material capabilities also played a role in Mexico's ability to make this strategic move. Mexico was the fourth-largest developing state in the international system at the time,¹¹ and a central part of the emission reduction issue was the question of developing country emission-reduction commitments. Pushing forward an agreement on this issue without the support of such a large developing country would therefore not likely have resulted in any concrete changes. When Mexico chose to sideline the issue as a whole (i.e., the question of *both* developed *and* developing country emission reductions), its strategy could be effective. The material power of Mexico was therefore likely to have been at least one of the key factors influencing its ability to adopt an issue linkage strategy.¹²

To test whether or not these effects are a part of a more general pattern in climate change negotiations, variables measuring (1) the costliness of a state's BATNA, (2) its material capabilities, and (3) an interaction of these two factors are included in the analysis that follows. In the context of climate change negotiations, each state's BATNA is influenced by its ability to deal with the adverse effects of unregulated greenhouse gas emissions and the resulting climate change effects *absent a negotiated agreement*. The costliness of each state's BATNA is therefore coded based on two factors: (1) its vulnerability to climate change (as captured by the Environmental Vulnerability Index),¹³ and (2) its ability to deal with those climate change problems unilaterally, making it less dependent on an agreement for help.¹⁴ States with the most costly BATNA face significant

¹¹ Its GDP was smaller only than that of China, Brazil, and India.

¹² It should be noted that Mexico was also in a strategic position of power, presiding over the negotiations. However, this position alone does not yield strong agenda control. Indeed, the chair of the COP often admits that she is at the mercy of the plenary session regarding adding or removing issues from the agenda. Moreover, in the Copenhagen COP, despite its best efforts, Denmark was not able to keep control of the agenda when larger states like the United States and BASIC countries chose to remove issues from it. Moreover, these powerful states were able to control the agenda despite *not* presiding over the negotiations. The material power of Mexico was therefore, at the very least, one key factor in its ability to adopt an issue linkage strategy.

¹³ The list of the factors related to climate change can be found on the website of Secretariat of the Pacific Community's Applied Geoscience and Technology Division: www.sopac.org/index.php/environmental-vulnerability-index.

¹⁴ The appendix lays out a detailed description of the coding process.

environmental impacts from climate change and have few resources to deal with those problems. States with the least costly BATNA face few adverse effects of climate change and have significant resources to deal with any problems they do face. The resulting variable is labeled COSTLY BATNA.

A measure of a state's material capabilities is also included in the model. In the context of these climate change negotiations, the material capabilities that are most likely to affect a state's bargaining behavior stem from its economic power.¹⁵ A measure of each state's GDP is included in the models to capture its effect on states' ability to adopt issue linkage strategies.

Finally, a measure that interacts these two variables is included in the model. This variable is labeled COSTLY BATNA x GDP. Given that states facing a more costly BATNA are more likely to adopt an issue linkage strategy when they have greater material capabilities to help them effectively do so, we would expect this interaction term to exert a positive and statistically significant effect on the likelihood a state will adopt an issue linkage strategy.

Empirical analysis: statistical tests

Statistical analyses are run to test whether the effects highlighted above hold across the multiple negotiations that took place in the Bali and Copenhagen COPs.¹⁶ The dependent variable is dichotomous, and the data is multilevel in nature – states' bargaining strategies are clustered within different negotiations, which are clustered within each conference. The analyses are therefore run using multilevel logit models, which include random effects at these different levels to control for potential unobserved heterogeneity across the cases clustered within them. This modeling choice is consistent with the models presented in the previous empirical chapters.¹⁷

¹⁵ While it is possible that even states without significant material capabilities could choose to suggest a change in the issues being negotiated, it is less likely that those states will be able to exert the influence needed to get other states to accept a change in the agenda. Given that more materially powerful states are better able to exert this type of influence, we would expect these states to be the ones most likely to actually adopt an issue linkage rule-changing strategy (when they face a costly BATNA, and thus have an incentive to do so).

¹⁶ The Cancún negotiations are not included in the analysis to avoid testing the argument on the case used to help derive the predictions being tested.

¹⁷ This model specification performs better than a standard logit model with clustered standard errors by controlling for potential unobserved heterogeneity across the different

Table 7.1. *Testing hypotheses 4 and 5 in the climate change case*

Issue linkage structure	−2.605*
<i>H4: $\beta < 0$</i>	(.958)
Costly BATNA x ln GDP	.009*
<i>H5: $\beta > 0$</i>	(.004)
Costly BATNA	−.255*
	(.099)
ln GDP	.134
	(.098)
High-level negotiation	−.224
	(.191)
Contact group negotiation	.016
	(.153)
Constant	−3.963
	(2.422)
N	2335
Level 2 units	13
Level 3 units	2
log likelihood	−1228.917
Variance at level 1	.165
	(.004)
Variance of level 2 random effects	.400
	(.107)
Variance of level 3 random effects	.414
	(.165)

*Indicates $p < .05$

Standard errors are reported in parentheses.

Table 7.1 reports the results of a statistical analysis of the effects we expect to be associated with the issue linkage structure and the interaction of a state's bargaining power and material power. Variables are also included to control for whether or not the negotiating forum was

negotiations in these conferences through the use of random effects at the level of the bargaining phase (level 2 in these models) and the conference itself (level 3 in these models). These random effects control for heterogeneity that might not be captured through the use of clustered standard errors in the standard logit model. At the same time, it allows for the inclusion and interpretation of negotiation-level independent variables, such as the ISSUE LINKAGE STRUCTURE variable, which could not be used if fixed effects were used to control for this potential heterogeneity (Gelman and Hill 2007).

a working group dedicated to a specific set of issues, or if it was the high-level plenary segment at the very end of the COP.

Statistical results

The statistical tests provide support for the argument regarding when and why states are likely to adopt an issue linkage rule-changing strategy. First, states are more likely to adopt such a strategy when bargaining over issues that are not differently valued, and are less likely to adopt such a strategy in negotiations characterized by issues that are differently valued. This is shown by the negative and statistically significant effect of the ISSUE LINKAGE STRUCTURE variable. Examining the substantive effects associated with variation in the current issue linkage structure, a state is about 15 percent less likely to try to change that issue linkage structure if the degree to which the current issues are differently valued increases by one standard deviation (thus increasing the possibility of reaching an agreement).¹⁸

Second, it is important to note that an increase in a state's material capabilities alone does not lead to an increase in the likelihood that state chooses to adopt an issue linkage strategy. This is shown by the statistically insignificant effect associated with the GDP variable. Because an interaction term of the two types of power is included in the model, the statistically insignificant coefficient associated with this material power component term represents the effect associated with an increase in a state's GDP for states facing the most beneficial BATNA (i.e., when the costliness of its BATNA takes on a value of 0). A state with such a beneficial BATNA is not likely to have any real incentive to adopt an issue linkage strategy. An increase in its material capabilities should therefore not make it significantly more likely to do so. This insignificant effect is demonstrated by the results of the statistical analysis.

However, having greater material capabilities *combined with* having a more costly BATNA does lead a state to adopt an issue linkage strategy. This is demonstrated by the positive and statistically significant effect of the variable COSTLY BATNA x GDP. Taking the point at which the costliness of a state's BATNA and its material capabilities are at their mean, a

¹⁸ Specifically, a state is .85 times as likely to adopt an issue linkage strategy when the issue linkage structure increases by one standard deviation. This effect, as are the effects that follow, is calculated by $e^{\beta \cdot \text{stdev}}$.

one-unit increase in that interaction leads that state to be almost fourteen times as likely to adopt an issue linkage strategy.¹⁹

It should be noted that the coefficient associated with having a costly BATNA is negative and might raise concerns. However, this coefficient captures the effect of having a more costly BATNA when a state's GDP is equal to 0. In reality, this situation does not occur. Figure 7.1 is included to help demonstrate the real effect associated with this variable, as it occurs through the interaction term.

Figure 7.1 plots the marginal effect of a one-unit increase in the GDP a state has and how the effect of this increase varies across the multiple values that a state's BATNA can take on. The marginal effect shows the rate of change associated with this increase. The statistically insignificant effect associated with having a highly beneficial BATNA (i.e., at the left-hand side of the x -axis) shows that when a state does not have a costly BATNA, an increase in its GDP is not associated with any statistically

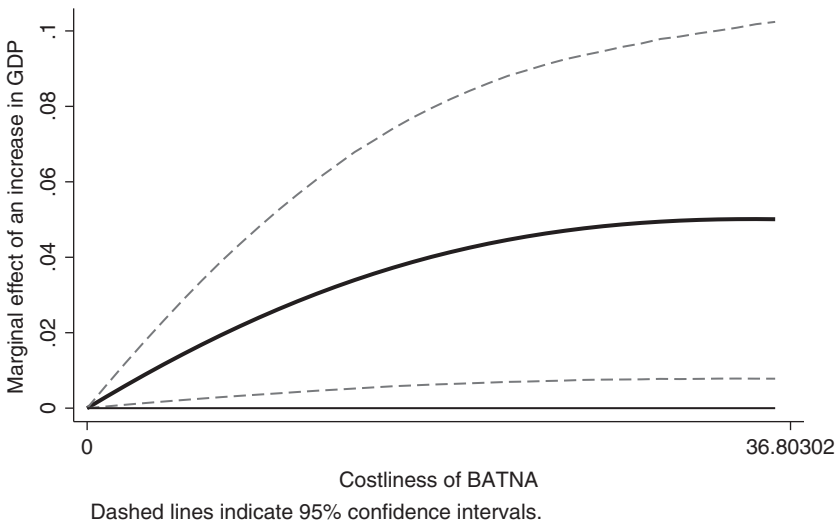


Figure 7.1 Marginal effect of a one-unit increase in a state's GDP on the likelihood states with more costly BATNAs will use issue linkage

¹⁹ In particular, a state is 13.98 times as likely to use issue linkage when the interaction of these two variables increases one unit from its mean. The coefficient associated with a one-unit increase in the interaction when both variables are at their mean is 2.63 (calculated using the "lincom" command in STATA to combine the three variables involved in this interactive effect, with both variables at their mean).

significant change in the likelihood it will adopt an issue linkage strategy. However, when the costliness of a state's BATNA is higher (i.e., moving toward the right on the x -axis), an increase in a state's GDP is associated with a positive and statistically significant rate of change. In other words, when a state has a more costly BATNA, an increase in its GDP makes it more likely to adopt an issue linkage strategy.

Overall, the key predictions regarding when and why states will link or unlink issues in a negotiation receive significant empirical support in these statistical analyses of climate change negotiations. States facing a more differently valued set of issues on the bargaining agenda are less likely to use a rule-changing strategy to alter that issue linkage structure. A more differently valued issue linkage structure is more likely to bring about an agreement, and therefore the need to use issue linkage is diminished. In addition, states that have significant costs associated with not reaching a climate change agreement are more likely to adopt an issue linkage strategy when they have greater material capabilities (i.e., a greater ability to effectively change the agenda). These theoretical predictions are not only supported by this analysis of climate change negotiations, but they can also help us to better understand the dynamics of these highly complex and important bargaining interactions. The remainder of this chapter uses these theoretical predictions to highlight the dynamics that characterized the final round of the COP in Copenhagen in 2009 – some of the most controversial negotiations that have taken place within the UNFCCC, to date.

Copenhagen Climate Change Conference, 2009

At the 2007 Conference of the Parties, states began to focus on creating a global climate change regime for the post-2012 period – i.e., after the Kyoto Protocol was set to expire. They created the Bali Action Plan (BAP), in which they agreed to a two-year negotiation process with a deadline for agreeing on long-term global goals for emission reductions at the Copenhagen COP in 2009. The Copenhagen negotiations were therefore arguably the most important climate change negotiations to occur since the Kyoto Protocol was agreed in 1997. Almost all world leaders participated in the high-level segment of the conference, which was attended by more than 40,000 individuals – representing governments, NGOs, intergovernmental organizations, and UN agencies. It was one of the largest, and most highly publicized and politicized, negotiations in the history of the international climate change regime.

Background: issues and sources of contention at Copenhagen

In line with the 2007 Bali Action Plan, the negotiations at Copenhagen were set to proceed along two “tracks”: one under the Convention and one under the Protocol. The Convention track negotiations were designed to deal with long-term cooperative action (LCA) by focusing on emission reduction commitments for both developed and developing countries. The goal was to make these commitments measurable, reportable, and verifiable, as well as nationally appropriate – i.e., requiring efforts consistent with a state’s level of development.²⁰ The Kyoto Protocol (KP) track negotiations were designed to extend developed countries’ Kyoto Protocol commitments beyond the original 2012 end-date, as well as to increase the emission reductions required of developed countries in that new commitment period.

The discussions and debates that took place in Copenhagen revolved around issues related to this two-track process. One of the most divisive issues involved the question of whether to maintain these separate negotiating tracks, or whether to merge them, with the outcome of the negotiations resulting in a single, legally binding treaty committing *all* major economies to a set of emission reduction standards. In general, developing countries wanted to keep the two-track approach. Securing a legally binding commitment to significant emission reductions by developed countries under the KP track without having their own potential emission reductions commitments as a part of that discussion was highly salient to the developing countries’ interests. In pushing for this, they highlighted developed countries’ “historical responsibility” for climate change. As the Chinese Deputy Foreign Minister argued, “People tend to forget where [climate change] is from. In the past 200 years of industrialization, developed countries contributed more than 80 percent of emissions. Whoever created this problem is responsible for the catastrophe we are facing.”²¹ The argument continued: because

²⁰ More formally, as stated in the Bali Action Plan, the goal was “to launch a comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action . . . by addressing, *inter alia*, a shared vision for long-term cooperative action, including a long-term global goal for emission reductions, . . . Measurable, reportable and verifiable nationally appropriate mitigation commitments or actions, including quantified emission limitation and reduction objectives, by all developed country Parties, and Nationally appropriate mitigation actions by developing country Parties in the context of sustainable development, supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner” (FCCC/CP/2007/6/Add.1, p.3).

²¹ Quote from audio recording leaked to *Der Spiegel*, and translated by Rapp, Schwägerl, and Traufetter (2010). A summary of this audio recording is available on *Der Spiegel*’s

developed countries were responsible for the climate change problem, the burden should fall on them to adopt strong measures to mitigate its effects.

On the other side, many developed countries supported a single-track approach: “an agreement delivering an environmental outcome . . . which has legally binding commitments for *all* major economies,”²² rather than “a mere Protocol extension.”²³ Such a single-track approach would require a commitment to emissions reductions from all major emitting states – both developed and developing – instead of from only the developed countries. This legally binding, single-track approach was promoted by the EU and the Umbrella Group,²⁴ and received additional, explicit support from Australia, Croatia, and Japan.

While these generalizations largely characterized the developed and developing states’ positions, some states did deviate from these trends. First, though they were members of the Umbrella Group coalition, the United States and the Russian Federation deviated from its general position. They strongly supported the single-track approach, as did the rest of the Umbrella Group. However, they did not necessarily want legally binding commitments to be agreed at this conference – even for developed countries. As the most vocal opponent of a legally binding framework, the United States “stressed the need for a structure that [was] ‘very different’ from the Kyoto Protocol, based on a *bottom-up* structure and actions implemented domestically.”²⁵ In other words, the United States supported a system in which each state could choose its own level of commitment and work to meet it, without being legally bound at the international level.

Second, the Alliance of Small Island States (AOSIS)²⁶ deviated from the overall approach of the other developing countries. Like the other developing countries, they supported a two-track approach with a legally

website: www.spiegel.de/international/world/the-copenhagen-protocol-how-china-and-india-sabotaged-the-un-climate-summit-a-692861.html.

²² Akanle et al. 2009f (emphasis added).

²³ Quote from Akanle et al. 2009b.

²⁴ The Umbrella Group is a loose coalition of developed countries which formed after the adoption of the Kyoto Protocol. The Group typically comprises Australia, Canada, Iceland, Japan, New Zealand, Norway, the Russian Federation, Ukraine, and the United States. The Umbrella Group evolved from the JUSSCANNZ group, which was active during the Kyoto Protocol negotiations.

²⁵ Akanle et al. 2009d (emphasis added).

²⁶ The AOSIS is a coalition of about 43 low-elevation and small island countries, most of which are members of the G-77.

binding commitment for developed countries under the Kyoto Protocol track. However, they *also* supported the creation of a legally binding commitment to mitigation actions by *all* major emitters under the LCA track – creating legally binding emissions reduction commitments for developing countries, as well. As stated by Grenada on behalf of the AOSIS states, “a final agreement must address emission reductions by *all* major emitting countries . . . A political outcome [is] inadequate, and AOSIS [will] ‘have to consider our options’ if a legally binding outcome is not achieved.”²⁷ Two days later, Tuvalu (one of the small island nations) presented a proposal based on these ideas – a proposal designed to complement, but not replace, the Kyoto Protocol. Tuvalu’s proposal was vehemently opposed by countries such as India and China, which argued that it would divert attention away from negotiations on a second commitment period for developed countries under the Kyoto Protocol. Also underpinning their opposition, however, was a desire not to be legally bound to specific reduction commitments.

As described by one observer, this debate over (1) the single- versus two-track approach, and (2) the legally binding nature of whatever outcome was achieved was quite “intense,”²⁸ and was a central source of divergence at the Copenhagen Climate Change Conference. There were, however, many other issues that divided the states in Copenhagen.

Related to the question of the one- v. two-track approach was the issue of developing countries’ obligations under the LCA track – that is, the nature of the “nationally appropriate mitigation actions” (or NAMAs) that would be taken on by developing countries. Three questions were central to the debate over NAMAs: (1) the degree to which these emission mitigation actions in developing countries would be financially supported by developed countries, (2) whether there would be a registry of nationally appropriate mitigation actions, and (3) the degree to which mitigation actions would be subject to international (rather than domestic) measurement, reporting, and verification (MRV) processes for compliance.

Developed countries including the EU, the Environmental Integrity Group (EIG),²⁹ and the Umbrella Group generally supported a registry for nationally appropriate mitigation actions and a robust MRV process. The EIG and Umbrella Group also supported the sharing of NAMA

²⁷ Akanle et al. 2009f.

²⁸ Akanle et al. 2009b.

²⁹ The Environmental Integrity Group was formed in 2000 and included Liechtenstein, Mexico, Monaco, the Republic of Korea, and Switzerland.

financing by both developed and developing countries. In contrast, most developing countries argued that financial support for NAMAs should come from developed countries alone. They also stressed that the verification of NAMAs should be conducted at the *domestic* level, rather than at the international level. China was particularly adamant about this latter point.

The issue of financing was not only important in relation to the funding of developing country mitigation actions; it was also a central point of debate for many other climate change programs. Overall, financing was an important and sensitive issue for many developing countries. This was especially true for the least developed countries (LDCs) and AOSIS countries, which were hit particularly hard by the negative effects of climate change. Issues of financing for various climate change programs were arguably the *most* important issues on the bargaining table for these two groups of states, due to the importance of these funds to their ability to (1) deal with the adverse effects of climate change, and to (2) actively and effectively pursue sustainable development programs. Together with all developing countries, the LDCs and AOSIS coalitions therefore wanted significant financial contributions from developed countries for mitigation,³⁰ adaptation,³¹ and sustainable development projects.³²

These first three sources of debate largely divided states down the line of developed versus developing countries. However, many other issues at stake in the Copenhagen negotiations were cross-cutting, making the negotiations significantly more complex. For example, two important issues that were also discussed during the Copenhagen conference related to the Clean Development Mechanism (CDM): (1) the regional distribution of CDM projects, and (2) whether to include carbon capture and storage (CCS) projects under the CDM. The question of the regional distribution of CDM projects was largely an African issue. Around the time of these negotiations, African countries lagged significantly behind all other regions in terms of securing CDM projects. In 2009, China alone had 568 (or 34 percent) of all registered CDM projects, India had 428 (26 percent), Brazil had 158 (10 percent), and the whole of Africa had

³⁰ Mitigation projects refer to projects designed to lower, or “mitigate,” emission reductions.

³¹ Adaptation projects refer to projects designed to help states deal with the adverse effects of climate change, such as flooding and rising sea levels.

³² Sustainable development refers to projects designed to help countries develop economically, but in a way that does not cause significant environmental harm, “sustaining” these resources for future generations.

20, representing about 1 percent of the total number of registered CDM projects.³³

This situation, and the desire of African countries to reap the benefits of CDM projects, led to a division between Africa and the other developing countries. Concerned with “improving the regional distribution of CDM projects,” several African representatives put forward proposals to help African countries obtain more CDM projects. These proposals included increasing the number of African staff members in the Secretariat’s mechanisms supporting the CDM program (proposed by Zambia), explicitly encouraging sectoral projects in Africa (proposed by the Democratic Republic of the Congo), calling for measures to simplify project registration and promote African Designated Operational Entities (proposed by Niger), and requesting the CDM Executive Board to prioritize a review of methodologies that could promote CDM projects in Africa (proposed by Swaziland). Most of these measures were opposed by other developing countries because measures favoring CDM projects in Africa could potentially diminish their own chance to win projects.

A second cross-cutting issue was a proposal to include carbon capture and storage (CCS) projects under the CDM. This proposal was strongly supported by many countries, but was also strongly opposed by many countries as well. CCS is a process that involves trapping CO₂ from industrial processes, including power generation from fossil fuels, and storing it underground or below the seabed. Many African countries supported including CCS under CDM because of the additional opportunities it created for them to access CDM projects. This proposal was also supported by two other major groups of countries, though for different reasons. First, by capturing and storing the emissions from industrial processes that used fossil fuels, rather than releasing them into the atmosphere, CCS provided a potential mechanism that could help keep fossil fuels in states’ energy policies while at the same time combating their adverse climate change effects. Countries such as Saudi Arabia, Kuwait, and the United Arab Emirates were therefore strong supporters of CCS because they were heavily dependent on the export of fossil fuels for their income. In addition, countries such as Saudi Arabia had made significant headway in the development of CCS technologies, and “Saudi officials

³³ This data comes from [Elkhamlichi’s 2009](#) presentation on the regional distribution of CDM projects.

[were] very eager to obtain investment credits for carbon capture and storage (CCS).”³⁴

Many developed states were also supportive of CCS projects because their economies were highly dependent on fossil fuels. Moreover, they were supportive not only of CCS in principle, but of explicitly including it in the CDM. Though these states did not often state it explicitly, CDM projects could be used to “test out” the effectiveness and viability of CCS technology outside their own country, while at the same time, providing benefits to developing countries (and earning emission reduction credits for doing so).

This underlying reason for supporting the inclusion of CCS under the CDM was also a major point of criticism highlighted by some states that were against it.

Transferring projects at this stage into developing countries would mean using developing countries as a testing ground for this technology. Europe, as well as other industrialized countries, have plenty of coal-fired power plants emitting hundreds of millions of tons of carbon dioxide year by year. There is therefore no need to use developing countries as ‘guinea pigs’ for this technology. Developed countries would reap the benefit, leaving developing countries to shoulder the long-term burden.³⁵

Beyond this political argument, CCS under CDM was also opposed for scientific and environmental reasons. For example, Brazil’s statement against the inclusion of CCS under CDM cited the non-permanence of the technology and the potential problems related to environmental integrity associated with CCS.³⁶ By 2009, the technology had not been tested on a “demonstration scale,” and thus had not been “proven” to be environmentally “safe and sound” – a requirement for inclusion in the CDM, as stated in the Kyoto Protocol. Moreover, questions of leakage, site selection criteria, and monitoring had not yet been fully addressed. Because of this, in addition to Brazil, states such as the AOSIS states (most ardently represented by Vanuatu and Grenada), South Korea, Ecuador, and Paraguay, spoke out explicitly against the inclusion of CCS under CDM.

³⁴ Quote from Cable 10RIYADH184, “Two Faces of Saudi Arabia’s Climate Negotiating,” created February 12, 2010.

³⁵ Greenpeace International 2008.

³⁶ Akanle et al. 2009a.

Bargaining strategy predictions

There were, of course, many other important issues that were debated in the Copenhagen conference. This discussion merely touched on a few of the most important ones. However, the point from this brief discussion can already be seen – the issues in the Copenhagen conference were divisive, and extremely important to the interests of states on both sides. Moreover, the issues at stake were cross-cutting, leaving no clear set of two or three coalitions of states that clearly aligned themselves together, overall. In fact, the issues even cut across the main coalitions of states that did exist coming into the negotiations. For example, the issue of CCS under CDM divided developing countries, the issue of the legally binding nature of the agreement divided the United States and Russia from other developed countries and the AOSIS states from other developing countries, and the issue of the regional distribution of CDM divided African countries from other developing countries. What negotiators faced at Copenhagen was therefore an extremely complex negotiating setting, and one that did not easily lend itself to the types of trade-off that could lead to an agreement. Overall, the issues were not differently valued by the UNFCCC states, and a zone of agreement was not created. The high-level plenary session that took place in the final days of the conference began with this full set of issues on the table.

Based on this key feature of the bargaining context, Chapter 3 (hypothesis 1) predicts that most states would adopt highly non-cooperative rule-compliant bargaining strategies during this high-level plenary session – either making demands and offering few to no concessions and/or attempting to extract concessions from other states. The end result would thus be an overall inability to reach an agreement. The argument presented in Chapter 4 therefore predicts that this lack of concession-offering would create an incentive for states to adopt a rule-changing issue linkage strategy (hypothesis 4). It further predicts that the states most likely to adopt this type of rule-changing strategy should be those facing costly alternatives to agreement (hypothesis 5). We would therefore expect to see these states changing the bargaining rules by using issue linkage strategies during this final segment of the negotiations (if and when they had the capability to do so) in order to help to bring about an agreement. This is exactly what happened in the final days of the Copenhagen conference.

Bargaining strategies in the Copenhagen high-level segment

The overall bargaining process at the Copenhagen Climate Change Conference high-level plenary session³⁷ in December 2009 consisted of four phases. The first phase took place at the beginning of the high-level plenary session, and was characterized by highly confrontational strategies, as predicted by the rule-compliant part of the theoretical framework. This created an incentive for states with a significant stake in agreement to change the rules of the game. Acting on this incentive, Germany, France, and the United Kingdom led a smaller, behind-the-scenes negotiation, focusing on a subset of key issues.

This second phase was thus characterized by a different set of contextual rules. The European leaders changed these rules in the hope of bringing about a bargaining agreement. To do so, they tried to simplify the bargaining process – gathering together representatives of key states for a closed-door negotiation, and focusing the discussion on a small number of key issues. They hoped that this would allow a core agreement to be reached, which could then provide the basis for a larger, overall agreement in the high-level plenary as a whole. However, the small subset of issues on which they focused was still not differently valued by the parties they had gathered round the bargaining table. This new set of bargaining rules again fostered the adoption of non-cooperative bargaining strategies, making it unlikely a bargaining agreement could be reached. Again, an incentive was therefore created for rule-changing strategies to be used.

This time, the United States acted on this incentive. The third phase consisted of another, even smaller, behind-the-scenes negotiation that took place between the leaders of the United States on the one side and Brazil, South Africa, India, and China (the BASIC countries) on the other. This informal negotiation again altered the bargaining rules – changing both the set of actors involved and the set of issues being discussed. This time, the rules were changed in a way that did facilitate agreement. The issues on the table *were* differently valued by the United States and BASIC

³⁷ This in-depth discussion differs from the large-N analysis in that it focuses on the multiple phases of the high-level segment itself. Instead of just focusing on the main plenary session of this part of the conference, as does the large-N analysis, this detailed discussion also includes a focus on the small, behind-the-scenes negotiations that took place during the very last days of the conference which were too small to be a part of the large-N analysis.

countries, and they exchanged concessions and came to an agreement amongst themselves.

In the final phase of the bargaining process, the United States and the BASIC countries presented the agreement they had reached as a “take-it-or-leave-it” offer to the rest of the states. The United States and the EU, which strongly desired agreement in Copenhagen, backed this choice with explicit and implicit threats and linkages in order to persuade other states to accept the agreement.

Overall, these multiple phases of the negotiations are not only consistent with the theoretical predictions derived in Chapters 3 and 4, but the argument presented in these chapters also helps to explain several of the problems encountered by negotiators during the Copenhagen Climate Change Conference.

Strategies phase 1: the early days of the high-level segment negotiations

The early days of the high-level segment of the Copenhagen Climate Change Conference were characterized by largely confrontational rule-compliant bargaining behavior on the part of almost all states. While agreement was forged on some minor issues, the politically important issues remained on the table, and no agreement was in sight. Rather than show flexibility on these issues, states made demands and some even made implicit threats in an attempt to extract concessions on the issues most important to their interests. For example, some developing countries, including Brazil and China, stated that “continuation of the Kyoto Protocol is of ‘critical importance’ to the G-77/China and ‘essential’ for the outcome in Copenhagen”³⁸ – implicitly threatening that they might be willing to veto the overall agreement if a second commitment to the Kyoto Protocol was not made by developed countries. Indeed, they did exactly this in the Green Room negotiations that followed.

More broadly, the early days of the Copenhagen Climate Change Conference were characterized by demands accompanied by few offers of concessions in return. For example, Russia and Japan stressed their desire for a “comprehensive and global” legal framework (i.e., a single-track approach), not “a mere Protocol extension.” This preference for a single-track approach was repeatedly expressed in multiple meetings, and Russia and Japan remained highly inflexible on this point. Throughout the early days of the conference, they often restated this position

³⁸ Quote taken from [Akanle et al. 2009c](#) (emphasis added).

in response to requests that were made on other issues. For example, this position was reiterated in response to a request for a protocol amendment.³⁹ In essence, Russia and Japan were demanding concessions regarding the move toward a global legal framework in order to be willing to move forward on other issues. In response to this confrontational type of strategy, several developing countries expressed concern over these states' "reiteration of positions" and complete unwillingness to offer concessions, calling for "good faith discussions under the Protocol."⁴⁰

This type of inflexibility and unwillingness to move from set bargaining positions led to little progress in the Copenhagen plenary negotiations. These strategies, and the resulting inability to reach an agreement, are consistent with the fact that the bargaining agenda was characterized by issues that were not differently valued. Such issues do not foster an exchange of concessions, but, rather, are issues that states are likely to fight over.

Moreover, the adoption of (confrontational) *rule-compliant* strategies by certain states is consistent with the predictions of hypothesis 5. Only states in a weak bargaining position – those facing a costly alternative to agreement – would be expected to adopt a rule-changing strategy. Most states did not face a costly enough alternative to agreement to bother to adopt a rule-changing strategy.

However, several states did face a costly BATNA in Copenhagen, and therefore did have an incentive to change the issue linkage structure in order to try to bring about an agreement. First, the AOSIS states had a costly BATNA. The AOSIS states were already facing significant adverse effects from climate change, and they were in need of financial support to help them deal with these changes. Without an agreement in Copenhagen, there would be no steps forward to increase funding for adaptation projects, and no steps forward to further mitigate greenhouse gas emissions. The no-agreement outcome would thus be extremely costly, and these states therefore had a strong incentive to adopt a rule-changing strategy to ensure that an agreement would be reached. However, the AOSIS states lacked the capability to do so. They did not have the economic or political clout needed to take charge and change the bargaining agenda to one that reflected their own interests.

However, two other sets of states had both the incentive and the capability to adopt a rule-changing issue linkage strategy. One, or both,

³⁹ Akanle et al. 2009b.

⁴⁰ Ibid.

of these groups were therefore likely to do so in response to the confrontational bargaining that characterized the plenary session. First, the inability to reach an agreement in Copenhagen was fairly costly to President Obama of the United States. President Obama campaigned for the presidency in 2008 with a promise that he would put the United States on a path to addressing climate change by reducing emissions of carbon dioxide and other greenhouse gas pollutants.⁴¹ With that campaign promise just a year behind him, President Obama had a strong interest in (1) demonstrating leadership in the international climate change negotiations, (2) having the Copenhagen negotiations lead to an agreement, and (3) having that agreement reflect US interests. Not reaching agreement therefore had potential domestic costs for President Obama, increasing his interest in bringing about an agreement.

Second, the European states also faced high reputational costs if an agreement was not reached in Copenhagen. In the 2000s, the European states staked their international reputations on playing a leadership role regarding environmental issues – climate change, in particular. This was demonstrated not only by the central role they played in the Kyoto Protocol negotiations, and the significant emission reductions commitments that they took on at that time, but also by the spotlight that they kept focused on climate change issues in the years following. The cost of not reaching an agreement was especially high for the European states in this particular conference, because it was being held in Copenhagen, “on their own turf.” The EU states were therefore expected to take the lead role, and to produce a substantively significant climate change agreement. Adding to this incentive to reach agreement under their leadership was the fact that the UNFCCC states had pledged in 2007 (at the Bali conference) to produce an agreement that would govern the post-2012 period at this specific conference.

Consistent with expectations based on their costly no-agreement alternatives and their overall capabilities, the European states took the lead, acting on their incentive to change the rules of the negotiation. They organized a meeting with multiple leaders from the most powerful states, as well as the leaders of states representing each of the main negotiating groups. Together, this smaller group would try to reach an agreement on a small subset of key issues that the European leaders put on the table. All the states that were involved in this smaller meeting were participants in changing the rules of the Copenhagen negotiation, but the fact that it

⁴¹ For evidence of this, see [Knowlton's article \(2008\)](#).

was European states that took the lead in organizing and conducting this smaller negotiation is consistent with the predictions of hypothesis 5.

Strategies phase 2: a high-level, European-led “green room” meeting

As described throughout the book, the goal of rule-changing strategies is to alter the bargaining process in a way that helps the states that changed the rules to receive concessions (or bring about an agreement) that they could not achieve under the original bargaining rules. This is precisely what the EU states attempted to do in this small meeting. First, they altered the set of actors around the negotiating table, limiting it to just twenty-six state representatives, whom they gathered together in the “green room” to negotiate. Most importantly, they altered the issue linkage structure in an attempt to get India and China – two of the largest developing country emitters – to accept legally binding emission reductions. To do so, they focused the negotiations on the following three issues: (1) setting emission reduction targets for developed and developing countries, (2) making those targets legally binding, and (3) the level of financing that would come from developed countries.⁴² The goal of the European leaders was to offer financial concessions in exchange for concessions from India and China (and other major developing country emitters) on the other two issues.

However, an analysis of the issue linkage structure in this phase of the Copenhagen negotiation shows that it was not one that would likely foster an exchange of concessions. While receiving financial support from developed countries was something that was important to the interests of India and China, it was not important enough to offset the cost of committing to legally binding emissions reductions. The issues of emission reduction commitments – and the legally binding nature of those commitments – were still the most important issues on the table for both India and China on one side, and the European states on the other. Both sides still wanted to win on the *same* issues. This indicates that, despite the change in the set of issues being negotiated, these issues were still not

⁴² Though the meetings were closed, a recording of these negotiations was leaked to the German newspaper, *Der Spiegel*. For a summary of this recording, see: www.spiegel.de/international/world/the-copenhagen-protocol-how-china-and-india-sabotaged-the-un-climate-summit-a-692861.html. An analysis of that recording reveals that these were the issues discussed during these closed negotiations. Other issues that were discussed in the larger Copenhagen conference were not on the table in this closed meeting.

differently valued. A mutually beneficial trade-off was therefore not likely to be possible.

The overall result of the European states' rule-changing strategy was the creation of an issue linkage structure that still fostered the adoption of non-cooperative (rule-compliant) bargaining strategies. This, in turn, impeded their ability to reach a bargaining agreement. The bargaining strategies adopted in this European-led meeting follow this prediction.⁴³

Early in the meeting, German Federal Chancellor Angela Merkel began by arguing that in order to stay within the maximum 2°C global temperature increase recommended by current science, developing countries would have to cut their emissions, in addition to the cuts made by developed countries. "Let us suppose 100 percent reduction – that is, no CO₂ in the developed countries anymore. Even then, with the [target of] 2°C, you have to reduce carbon emissions in the developing countries. That is the truth."⁴⁴ She then followed up this argument by laying out a European "demand" – to have a commitment for a *global* reduction of 50 percent in greenhouse gas emissions by 2050. Such a "global" reduction would involve commitments by both developed and developing countries.

China's negotiator responded, "Thank you for all these suggestions. We have said very clearly that we cannot accept the 50 percent reductions. We cannot accept it." The Indian representative also refused to commit to precise emission reduction figures, leading Chancellor Merkel to become frustrated: "Then you don't want anything legally binding!"⁴⁵

China and India further argued that they wanted more time to decide on these issues, and thus to postpone making commitments until the next climate change conference in Cancún in 2010. Chancellor Merkel and the other European leaders argued that they did not want to put these issues off; they wanted a resolution now. Even President Obama, who was largely silent at this meeting, spoke up, attempting to help China understand the necessity of arriving at an agreement. "I'm saying that I'm confident that China still is desirous of an agreement, as we are. And the alternative right now is a breakdown in talks, which I think would be very counterproductive."⁴⁶

⁴³ The audio tape leaked to the German newspaper, *Der Spiegel*, provides inside information on the precise back and forth that took place in these negotiations.

⁴⁴ Quoted in [Rapp, Schwägerl, and Traufetter 2010](#).

⁴⁵ Ibid.

⁴⁶ Ibid.

This back and forth between India and China, on the one hand, and Europe, on the other, is consistent with the importance both sides placed on achieving their own interests on these emission reduction issues. It highlights the non-cooperative strategies adopted by both sides: the demand and pressure exerted by the Europeans, and the delaying tactics and lack of concession offers by India and China.

In reaction to India and China's unwillingness to concede, the European leaders shifted their bargaining strategy, moving toward tactics designed to try to extract those concessions. Specifically, Gordon Brown, Prime Minister of the United Kingdom, made an implicit threat that financial assistance from developed countries might be withheld absent legally binding commitments from the developing countries. He argued that financing could only be made if an agreement was reached and commitments were made at these talks. "It is the only way that we justify the public money being spent."⁴⁷

In the end, the European leaders and the representatives of India and China were unable to reach an agreement. Many observers and analysts tend to blame China for the lack of agreement – particularly after hearing the audio recording of the negotiations leaked to *Der Spiegel*. For example, Ed Miliband, the United Kingdom's climate secretary, argued that China vetoed multiple potential agreements, which were supported by a coalition of developed countries and a majority of developing countries.⁴⁸

While such claims are not untrue, it is important to note that, as the analysis here shows, the issue linkage structure of this phase of the negotiations *fostered* these confrontational types of bargaining strategy. In their restructuring of the bargaining game, European leaders underestimated how important it was to the interests of India and China that they avoid having to make any legally binding emission reduction commitments. Given the importance of this issue, the cost of conceding on it could not be outweighed by gaining financial support from developed countries – an issue that was not as important to India and China as it was to other developing states such as the LDC and AOSIS coalitions. Analyzing the *structure* of the negotiation that the European leaders created shows that it fostered precisely the confrontational strategies that India and China adopted, as well as the strategies the European leaders were forced to adopt as they struggled to win concessions from India and China. The

⁴⁷ Ibid.

⁴⁸ See Miliband 2009. Rapp, Schwägerl, and Traufetter (2010) even titled their article, "How China and India Sabotaged the UN Climate Summit."

meeting therefore adjourned for a break with little progress achieved on the key issues.

These confrontational strategies, and the overall lack of an agreement fostered by this issue linkage structure, again created an incentive for other states to adopt rule-changing strategies in an attempt to create (1) an issue linkage structure that *would* foster an agreement, and (2) an agreement that would reflect their own interests. Given the analysis of states' alternatives to agreement presented above, we would expect President Obama to have such an incentive. Moreover, given the capabilities of the United States, we would expect him to be able to act on this incentive and adopt such a rule-changing strategy. Consistent with this prediction, President Obama changed the rules defining the negotiating context, again creating a new phase of negotiations with a new set of actors and a new issue linkage structure.

Strategies phase 3: high-level, US-BASIC negotiations

With his campaign promise to put the United States on a path to address climate change just a year behind him, President Obama had a strong incentive to demonstrate leadership in these international climate change negotiations, and a strong incentive to have these negotiations lead to an agreement. Moreover, he had a strong interest in having US interests reflected in that agreement.

Consistent with the predictions of hypotheses 4 and 5, in order to bring about an agreement – and one that reflected US interests – President Obama adopted a rule-changing, issue linkage strategy. During the break in the green room negotiations, he set up a bilateral meeting with Premier Wen Jiabao of China and tried to schedule a separate multilateral meeting with Brazil, South Africa, and India to work out an agreement with these countries on his own. The US team was unable to schedule the multilateral meeting, but recognized that China was the main source of impasse, and that India, Brazil, and South Africa were likely to follow the Chinese lead. For example, there is evidence of this US-held belief regarding the “transparency issue” – one key aspect of the question of developing country emissions reductions. This issue dealt with questions of monitoring and verification of emission reductions – an issue which was seen as central to achieving an agreement on emission reduction commitments from the BASIC countries.⁴⁹ Winning over China could

⁴⁹ White House 2009.

therefore potentially bring about an agreement. The bilateral meeting between the United States and China would therefore be key.

However, when President Obama arrived at the room to meet with Premier Wen, the leaders from the other three BASIC countries were already present in the room for their own strategy meeting. President Obama took advantage of the situation. “The President’s viewpoint [was], I wanted to see them all, and now is our chance.”⁵⁰ President Obama pulled up a chair, sat next to President Zuma of South Africa, and began the multilateral negotiation he had originally planned.

By seizing this opportunity, President Obama again changed the bargaining rules – altering the set of issues on the negotiating table and the set of actors involved. However, unlike the structure that the European leaders created with their rule-changing strategy, President Obama created a new bargaining structure characterized by issues that were differently valued by the United States and BASIC countries that now sat around the table. It was thus an issue linkage structure that could foster cooperative bargaining strategies among this group.

In particular, like India and China, the United States was not interested in committing itself to legally binding emission reductions. By removing the European states from the negotiation, President Obama could act on this common interest, and take the issue of creating legally binding emission reduction commitments off the table. This is precisely what President Obama did. He “abandoned” his European colleagues,⁵¹ and created a new negotiation, which involved only the United States and the lead developing countries – Brazil, South Africa, India, and China (the BASIC states) – and removed the issue of a legally binding agreement from the table. Neither side had an interest in binding themselves at this stage,⁵² and therefore a point of impasse which characterized earlier rounds of negotiations was removed. This negotiation focused instead on the two “smaller,” still unresolved issues – (non-legally binding) emission reduction commitments and financial support from developed countries.

Both developed and developing countries, respectively, had signaled flexibility on these issues in the later days of the conference, highlighting the potential for an exchange of concessions across them. The United States, Japan, and the European states had made clear signals of their

⁵⁰ White House 2009.

⁵¹ Rapp, Schwägerl, and Traufetter 2010.

⁵² Indeed, earlier in the Copenhagen conference, the United States had stressed “the need for a structure that is ‘very different’ from the Kyoto Protocol, based on a bottom-up structure and actions implemented domestically” (Akanle et al. 2009d, 2).

willingness to put forth significant financial assistance toward developing states with regards to mitigation and adaptation initiatives for climate change. Specifically, at her press conference on Thursday, December 17, US Secretary of State Hillary Clinton announced that the United States “[was] prepared to work with other countries to mobilize US\$100 billion a year by 2020.”⁵³ On that same day, Japan made a financing announcement “to raise climate aid to about US\$15 billion by 2012.”⁵⁴ Moreover, the EU representative had earlier highlighted “the need for funding in the order of 100 billion euros annually by 2020 to support adaptation and mitigation” and “the need for fast-start financing of 5–7 billion euros to enable immediate action.”⁵⁵ China also signaled a willingness to be more flexible, indicating in the late days of the conference that it might allow some degree of international monitoring and verification of developing country mitigation actions.⁵⁶

These two issues were the ones that President Obama put on the negotiating table in the US–BASIC meeting. An analysis of the interests of the United States and the BASIC countries across this new set of issues shows that these issues were differently valued. The issue linkage structure was therefore one that could lead to a mutually beneficial exchange of concessions, and an agreement. Given that cooperative, concession-offering strategies could be fostered by both sides, the theory predicts that none of the states involved would have an incentive to change the rules of this negotiation. Instead, they would have an incentive to play by the rules and offer the concessions fostered by this new issue linkage structure.

Indeed, this is precisely what occurred in this US–BASIC meeting, and what led to agreement at the Copenhagen conference. The United States offered significant financial support to the developing countries in support of any mitigation efforts they made and, in return, the BASIC countries politically committed themselves to adopt steps to reduce emissions. These commitments were not *legally binding*, but they would be internationally registered and monitored. Moreover, while most measurement, reporting, and verification (MRV) of these reductions would occur at the domestic level, international consultations and analysis with “clearly defined guidelines” would be involved in the MRV process for developing countries. Moreover, they agreed that the commitments by

⁵³ Akanle et al. 2009e.

⁵⁴ Ibid.

⁵⁵ Akanle et al. 2009f.

⁵⁶ Akanle et al. 2009e: 4.

both developed and developing countries would strive to meet the mitigation target of no more than 2°C, as recommended by current scientific evidence.

Both the United States and the BASIC countries therefore made concessions. The United States offered significant financial support – pledging that, together with other developed countries, it would provide US\$30 billion for the 2010–12 period and would mobilize a further US\$100 billion a year by 2020. In return, for the first time, the BASIC countries made political commitments to reduce their emissions. Moreover, they all agreed to strive to meet the 2°C target. Finally, despite China’s significant opposition, it agreed to some level of international involvement in the MRV process.

The bargaining strategies in this US–BASIC meeting were therefore characterized by rule-compliant, cooperative strategies, despite the fact that rule-changing strategies were available to all states involved. The BASIC countries did not have to make these concessions. They could have vetoed the agreement; they could have attempted to extract additional concessions from the United States by changing the rules yet again. However, the bargaining structure fostered the exchange of concessions, and this is the set of strategies that resulted. The end result from this US–BASIC meeting was the Copenhagen Accord, which defined the outcome of the overall Copenhagen Climate Change Conference.

Strategies phase 4: the aftermath of the US–BASIC agreement

The Copenhagen Accord was thus crafted at a closed meeting between the United States and BASIC countries. They returned to the others in the green room and presented them with the Accord as a “take-it-or-leave-it” offer. In previous days of the negotiations, draft texts could be rejected piecemeal, with alternate texts proposed and adapted to better incorporate different states’ interests. By drafting their own version of an agreement and presenting it to the other states in this “take-it-or-leave-it” style at the last minute of the conference, the United States and the BASIC countries effectively reduced the other countries’ alternative to the proposed Accord to “not reaching an agreement at all” rather than “the potential for a better agreement if negotiations continued.” There was little time for additional drafting and major changes to the key points of the text. The United States and the BASIC countries made it clear that this *was* the agreement, and the only outcome that would have their support. President Obama (and several other state leaders) even left

the conference after the US–BASIC meeting and before the final plenary session with the assumption that the negotiations were over.

When the Accord was presented to the other states, they were therefore left with a choice between no agreement at all, and the Accord, which clearly did not go as far as many states had hoped the agreement in Copenhagen would go. First, the agreement was not legally binding – a fact that reflected the interests of the United States and BASIC countries, but which did not reflect the interests of many other states, such as those of Europe and the AOSIS. Second, it contained no specific mid-term or long-term targets for emissions reductions. Finally, the political commitments to reduce emissions that were made in the Accord were not actually substantial enough to meet the 2°C target recommended by science. However, the states in the green room considered this agreement to be better than nothing, and accepted it, despite its drawbacks.

The Accord was then presented to the full plenary. A small number of developing countries led by Venezuela, Bolivia, Cuba, and Nicaragua spoke out against the Accord, due to the “untransparent and undemocratic” procedure through which it had been created. Tuvalu criticized both the text and the procedure by which it was negotiated, and Sudan called the Accord “a suicide note for Africa.”⁵⁷ However, the developed countries, most developing countries, and spokespersons for the AOSIS, LDCs, and the African Group accepted the negotiating process as legitimate. As one negotiator argued, “the only way to ‘get a real deal’ was to get the ‘big boys’ involved – and they [will] inevitably use their own procedures and tactics.”⁵⁸ However, due to the opposition of the few, and the requirement of consensus, the text could not be officially adopted. The text was therefore “taken note of” at the end of the Copenhagen Climate Change Conference.

However, the United States did not stop there. The Copenhagen Accord represented a potential solution to several problems facing the United States. It reversed the UN’s top-down approach by removing the potential for legally binding commitments, allowing each state to choose its own targets for greenhouse gas reductions – an outcome that reflected US interests. Moreover, the Accord presented a way to bind China and other rapidly growing economies into the UN process – at least politically. However, because the Accord was not officially adopted, these beneficial outcomes could potentially be lost. It was therefore very much

⁵⁷ Akanle et al. 2009f.

⁵⁸ Quotes from Akanle et al. 2009f: 29.

in the US interest to get as many states as possible to sign onto the Copenhagen Accord, increasing the likelihood that an agreement reflecting these outcomes could be *officially* adopted down the road.

At the end of the Copenhagen conference, a flurry of activity began among the US diplomats, who issued threats and promises in order to win support for the Copenhagen Accord. These rule-changing strategies reflected the use of coercion to alter the status quo for hold-out states, as well as the more cooperative use of side payments. The goal of both strategies was to move states that were holding out to accept the Copenhagen Accord.

Maldives was one of the first hold-out states to express support for the Accord – largely moved by the US promise of \$30 billion in aid for the poorest nations hit by the adverse effects of global warming – a group which included Maldives. The motivation that the promise of aid played in influencing the Maldives' decision to support the Accord can be seen in a diplomatic dialogue that took place on February 23, 2010, between the Maldives' ambassador-designate to the United States, Abdul Ghafoor Mohamed, and US deputy climate change envoy, Jonathan Pershing. In this dialogue, Ghafoor requested that "Maldives would like to see that small countries, like Maldives, that are at the forefront of the climate debate, receive tangible assistance from the larger economies. Other nations would then come to realize that there are advantages to be gained by compliance. These [other] coalitions must be coaxed and not pushed into making decisions and meeting deadlines."⁵⁹ In making this statement, Ghafoor was not only explicitly requesting additional funds from the United States for specific projects in Maldives, including harbor deepening and strengthening sea walls, which would cost approximately \$50 million,⁶⁰ but was also signaling to the United States the potential effectiveness of this aid-providing strategy when attempting to persuade other states to sign on to the Accord. This was particularly likely to be the case for states that were highly vulnerable to the adverse effects of climate change effects, as Maldives was.

This signal was clearly recognized, as shown by a discussion between Pershing and the EU climate action commissioner, Connie Hedegaard. The EU and its member states, which placed significant importance on moving forward in the realm of climate change, adopted similar

⁵⁹ Quote from Cable 10STATE18437, Maldives ambassador's Washington consultations, created February 26, 2010.

⁶⁰ Ibid.

rule-changing strategies in order to secure support for the Copenhagen Accord. Pershing stated that “most African and Latin American states are looking to turn Copenhagen into a binding agreement,” in line with US interests, “but the BASICs are opposed to this.” In response, Hedegaard suggested that the AOSIS countries “could be our best allies given their need for financing.”⁶¹ This highlighted the potential to use financing as leverage to gain support for the Accord from AOSIS states – many of whom did not associate themselves with the Accord at the beginning.

Rule-changing strategies that were not cooperative in nature were also adopted behind the scenes. For example, citing Ecuador and Bolivia’s opposition to the Copenhagen Accord, and US disapproval of this opposition, the United States cut off aid to both of these states.⁶²

These behind-the-scenes strategies had a very direct effect on the acceptance of the Copenhagen Accord by several states, showing how effective rule-changing strategies can be. Side payments were offered in the form of aid, and threats were made against more antagonistic states. Both methods were rule-changing tactics designed to win support for the Copenhagen Accord. By the end of the Copenhagen conference, 105 states had expressed the desire to associate themselves with the Accord, and by the end of February 2010, that number had increased to 140. These signatories represented 75 percent of the 193 countries that are party to the UNFCCC and countries responsible for over 80 percent of greenhouse gas emissions, helping to increase the likelihood that the measures reflected in the Accord might be officially adopted down the road.

In the end, the agreement fell through because of the “unfair” tactics many states argued were used to bring it about – demonstrating many states’ opposition to the changing of the rules by the larger, more materially powerful states. The discussion therefore continued into the 2010 Cancún Conference. Even though it ended up not being successful, the discussion of the Copenhagen negotiations helps to illustrate the rule-changing argument presented in Part I at work.

Conclusions from climate change negotiations

Overall, this chapter provides empirical support for the issue linkage argument presented in Chapter 4. As the results reported in the statistical analysis showed, states are likely to use an issue linkage strategy to change

⁶¹ Cable 10BRUSSELS186, Climate: Pershing and Hedegaard Commit to Close, created on February 17, 2010.

⁶² [Goldenberg 2010](#).

the rules when the current bargaining rules are characterized by the linkage of issues that are not differently valued. In addition, states facing a more costly no-agreement alternative are more likely to adopt issue linkage rule-changing strategies, and to do so when they have the material capabilities that allow them to exert influence over the process. Moreover, as the illustrative description of the high-level segment of the Copenhagen conference demonstrated, when adopting these rule-changing strategies, states are likely to try to create an issue linkage structure characterized by issues that are differently valued, working to create a new set of rules that will foster an exchange of concessions and the ability of states to reach an agreement.

The next chapter goes further, showing the full range of rule-changing strategies and predictions at work in a very different case – the multi-phase process of the Kosovo status negotiations. Together, these two chapters provide diverse empirical support for the rule-changing part of the argument that was presented in Part I.

Changing the rules in the Kosovo status process

In the 1990s and 2000s, some of the most important bargaining interactions in the international system centered around questions of self-determination and statehood. These types of question were (1) part of the negotiations that ended the civil war between Sudan and South Sudan in 2005, (2) at the heart of the Kosovo status process in the aftermath of the 1999 Kosovo War, and (3) a central part of the ongoing negotiations between Israel and Palestine. Because negotiations dealing with these types of question inevitably center around the issue of state sovereignty, they are an important category of negotiation to consider – showing the range of cases to which the rule-compliant/rule-changing argument can apply. This chapter therefore focuses on the negotiations surrounding Kosovo’s attempts to break away from Serbia – negotiations referred to broadly as the “Kosovo status process.”

The Kosovo status process was characterized by multiple negotiations between different political actors in different political and institutional settings. These negotiations are not only important to cover as part of the overall analysis in the book, but they also represent a bargaining process where both coercive, BATNA-worsening strategies, and issue linkage strategies were readily available to the bargaining states. Focusing on these negotiations therefore allows for the full range of predictions in Chapter 4 to be examined, complementing the empirical tests conducted in the previous chapter.

A structured comparison of the different negotiations that characterized the Kosovo status process helps to highlight the specific factors that influenced when and why rule-changing strategies were adopted, and the cooperative nature of those rule-changing strategies. Specifically, six separate bargaining phases, which were central to the overall Kosovo status process, took place between 2006 and 2008. The analysis of these negotiations is based on twenty interviews with officials from the EU’s Political and Security Committee (PSC) and its preparatory group (CivCom). These individuals were directly involved in the EU’s internal negotiations

over the deployment of an EU mission to Kosovo. In addition, they had extensive knowledge of the non-EU negotiations that characterized the Kosovo status process¹ – both between Kosovo and Serbia and within the UN Security Council. The interviews were supplemented with secondary research, including a review of UN Security Council documents and Secretary General reports, as well as media coverage of the negotiations. Together, these sources provide a comprehensive picture of the multiple negotiations surrounding the Kosovo status process.

Each bargaining interaction is analyzed using a structured case study to show how the behavior of states followed the predictions regarding when and why states are likely to use rule-changing strategies, and the cooperative nature of the strategies they are likely to choose when doing so. The cases are then analyzed in “most similar” pairs to highlight how variation in the key independent variables led to changes in states’ bargaining strategies across these interactions. This analysis, combined with the analysis of climate change negotiations in the previous chapter, provides support for the argument across a wide range of negotiations.

The Kosovo status process: background

Ethnic conflicts and tensions were increasingly prevalent during and after the breakup of the former Republic of Yugoslavia. One of the most heated of these conflicts was a territorial dispute over Kosovo between ethnic Serbs and ethnic Albanians, which culminated in the Kosovo War in 1999. At the end of the war, the UN Security Council passed Resolution 1244, which demanded the withdrawal of Serbian (Yugoslav) forces from Kosovo and the demilitarization of Kosovo Albanian groups. NATO provided a mission on the ground (the Kosovo Force, or KFOR) to help keep the peace. Most importantly, UNSC Resolution 1244 established the UN Interim Administration Mission in Kosovo (UNMIK), with an

¹ These EU officials were knowledgeable about the positions and interactions between Kosovo and Serbian officials, because they had extensive, direct contact with them regarding the preparations for the EU’s mission to Kosovo, as well as regarding the mission’s everyday, on-the-ground activities after the mission was deployed. They were also knowledgeable about the negotiations in the UN Security Council. First, several of the EU member states were on the UN Security Council (UNSC), and made everyone at the EU level aware of what was going on at the UN level. Moreover, the UNSC negotiations had a direct bearing on the EU’s mission – whether or not it could go forward, what its mandate would be, where it could deploy, and what its relationship would be to the UN mission already in Kosovo (UNMIK). The negotiators involved in creating and carrying out the EU’s mission therefore had to be constantly aware of what was happening at the UN level.

unprecedented, broad mandate to “provide Kosovo with a transitional administration, while establishing and overseeing the development of provisional democratic self-governing institutions.”² UNMIK was literally tasked with providing the governing functions for Kosovo in the post-war period – providing the province with police, judges, prosecutors, and other individuals involved in rule of law administration for the province. The goal of this interim administration was to prepare the ground for an eventual UN-facilitated “Kosovo status process” – a political process of negotiations between Kosovo and Serbia to determine whether Kosovo would become an independent state or whether it would remain a Serbian province.

It took some time before the negotiations began. In November 2005, a Contact Group – made up of the United States, the United Kingdom, France, Germany, Italy, and Russia – was established in the UN to oversee the process, and Martti Ahtisaari was appointed as the UN Status Envoy. This appointment officially launched the process to determine the future status of Kosovo. UN-backed talks, led by Ahtisaari, began in February 2006 between Kosovo and Serbia. This first round of Kosovo–Serbia talks is analyzed as NEGOTIATION 1.

These talks were supposed to result in a proposal for agreement from Ahtisaari by the end of 2006. However, the unveiling of his proposal was delayed until after Serbian legislative elections (called for by President Boris Tadić to be held on January 21, 2007) in an effort to avoid increasing support in these elections for Serbian ultra-nationalists.³ Ahtisaari therefore unveiled his proposed plan for Kosovo’s future in February 2007. The plan called for “supervised independence” for the province – specifying that Kosovo should be entitled to sign international treaties and to apply for membership in institutions such as the EU, the UN, the International Monetary Fund, and the World Bank. However, the proposal did not officially recommend that Kosovo should become independent. The plan also called for NATO to continue to provide security in Kosovo, while a mission from the European Union would gradually take over from UNMIK the responsibility for rule of law matters.⁴ A second round of UN-backed negotiations between Kosovo and Serbia began,

² UNSC Resolution 1244.

³ For discussions of this, see *The Economist* 2006 and *New York Times* 2006.

⁴ See the proposal itself as a direct source for these observations (UN document S/2007/168/Add.1, Articles 1, 13, and 14). For a simple summary of these main points, see [Rettman \(2007a\)](#).

with Ahtisaari's proposed plan as the basis for those discussions. This second round of Kosovo–Serbia talks is analyzed as NEGOTIATION 2.

Like the first round of talks, this second round again failed to result in an agreement between Kosovo and Serbia. Following these two failed rounds, the United States and the EU decided to work directly through the UN Security Council to achieve independence for Kosovo. To do so, they prepared a draft UN Security Council resolution based on the Ahtisaari proposal. In May 2007, they circulated this draft resolution to other Security Council members, with the hope of reaching an agreement on this resolution by the end of June. The negotiations within the UN Security Council over this draft resolution, which took place in May and June 2007, are analyzed as NEGOTIATION 3.

By July 2007, the UN Security Council resolution had been drafted and redrafted in an attempt to secure Russian support. However, Russia would not let it through without Serbian approval.⁵ The United States and the EU therefore agreed to a restart of talks between Kosovo and Serbia, giving up on the draft resolution. This new round of Kosovo–Serbia talks, which took place in late 2007, is analyzed as NEGOTIATION 4.

Both the United States and the EU then began to work behind the scenes in order to achieve their interest in having an independent Kosovo and the establishment of an EU mission to build up the rule of law in the province. On the one side, the United States began to work with Kosovo to coordinate a unilateral declaration of independence.⁶ At the same time, the EU altered its operational plans for the mission it was planning to send to Kosovo. Instead of proposing to send the mission under the legal heading of a new UN Security Council resolution, the internal EU negotiations shifted to establish a legal basis that they could argue fell under the *already-established* UNSC Resolution 1244. Using this new legal heading would allow the EU to deploy its mission to Kosovo without the backing of a new UN Security Council resolution.⁷ On December 14, 2007, the EU reached a political agreement calling for an EU Rule of Law mission (EULEX) to be sent to Kosovo.

⁵ Interview with ambassador on EU's PSC, May 7, 2010. To corroborate this statement, see Hoge (2007c), Bilefsky and Wood (2007), and Spongenberg (2007b). As Spongenberg (2007b) observes, "Washington has hinted it would back a move by Kosovo to unilaterally declare independence." Moreover, as Hashim Thaci – former leader of the Kosovo Liberation Army and current winner of a seat in the Kosovo Parliament – stated, "We will not do anything without the support of Washington" (quoted in Bilefsky and Wood 2007).

⁶ Interview with ambassador to EU's PSC, May 18, 2010.

⁷ This was reported by multiple interviewees (interviews 2010).

On February 17, 2008, Kosovo unilaterally declared independence from Serbia, adopting its own constitution which was set to come into effect on June 15, 2008. One of the most important effects of this move was that the constitution gave the UN no role in Kosovo.⁸ Kosovo planned to allow the EU mission to come in to help establish the rule of law in its “new state” – taking over the remaining prerogatives of UNMIK. Kosovo Serbs, however, refused to cooperate with the EU mission, arguing that it had been deployed illegally, given that UNSC Resolution 1244 was still in effect. Russia also worked to hinder the EU mission by exerting pressure internally within the UN administration to prevent the handover from UNMIK to EULEX.⁹

EULEX therefore needed the cooperation of the Kosovo Serbs (and thus Serbia) as well as the cooperation of the UN to be able to effectively carry out its mission. In other words, the EU needed to negotiate with Serbia (and Russia) to reach an agreement that would make them willing to cooperate with EULEX, a mission that was already on the ground in Kosovo. These negotiations took place within the UN Security Council in two main rounds. The first, in July 2008, did not result in an agreement, but an agreement was reached in the second round of negotiations in November 2008. Serbia accepted that EULEX would have a significant presence in Kosovo; and Kosovo and the EU accepted that EULEX would have limited powers, working in coordination with UNMIK, which would remain. These two rounds of negotiations are analyzed as NEGOTIATION 5 and NEGOTIATION 6, respectively.

As described throughout the chapter, many characteristics of these negotiations remained constant – including the underlying issues at stake and interests involved. However, the contextual rules of the game varied widely. The variation in the contextual rules across these different negotiations contributed in important ways to the adoption of different bargaining strategies throughout the Kosovo status process.

Negotiation 1: Kosovo–Serbia talks, 2006

Kicking off the Kosovo status process in November 2005, Martti Ahtisaari was appointed as the UN Status Envoy. Talks between Kosovo and

⁸ For evidence of this, see the discussion regarding the effects of this Constitution by Secretary-General Ban Ki-Moon (UN document S/2008/458, para. 2).

⁹ Quotes from interviews with EU officials which back up this claim are laid out in the more detailed discussion below. For some corroboration of this in the public forum, see [Vucheva \(2008\)](#).

Serbia, overseen by Ahtisaari, began in February 2006. During the course of these negotiations, progress was made on technical matters, but both Kosovo and Serbia remained completely unwilling to move on the question of independence.¹⁰ Kosovo leaders wanted Kosovo to become an independent state, and Serbia wanted the region reintegrated into Serbia.

This negotiation was characterized by three key factors that created a strong incentive for Kosovo to adopt a rule-changing strategy. First, in this negotiation (as well as many that followed), the no-agreement outcome was defined by UNSC Resolution 1244, which “reaffirmed the sovereignty and territorial integrity of the Federal Republic of Yugoslavia” to which Serbia was a successor state (and Kosovo was not). The status quo therefore served to protect the sovereignty and territorial integrity of Serbia, and left Kosovo without independence and under the governance of UNMIK. The status quo was therefore significantly more beneficial for Serbia than it was for Kosovo, yielding Serbia a better BATNA, and thus more “bargaining power,” in this negotiation.

This no-agreement outcome was somewhat complicated by a threat put forth by several states in the UN that an agreement might be imposed by the Security Council if Serbia and Kosovo were not able to reach one on their own by the end of 2006. Representatives of the United States, the United Kingdom, France, Germany, and Italy explicitly stated that they expected the United Nations to start work on a plan that would involve some form of independent state in autumn 2006 if forward progress was not made in the Serbia–Kosovo talks.¹¹ However, Russia made it clear to all parties involved that it would veto any outcome in the UN Security Council that was not supported by Serbia.¹² While the threat was made that an agreement might be imposed by the states that were on Kosovo’s side in the negotiations, the assurance of a Russian veto prevented this threat from effectively influencing Serbia’s valuation of its BATNA. The no-agreement outcome in this round of negotiations was therefore defined by the continuation of UNMIK and Security Council Resolution 1244 – providing Serbia with the more powerful bargaining position.

Second, the negotiation was (arguably) characterized by a focus on relative gains – as were all the negotiations between Kosovo and Serbia. These negotiations revolved around the issue of state sovereignty for both

¹⁰ For more on this, see [BBC News \(2006\)](#).

¹¹ [Wood 2006](#).

¹² Interview with representative in CivCom, May 14, 2010.

states. Any gain for one was a direct infringement on the sovereignty of the other. This was most extreme for Kosovo, because the outcome of the negotiations literally affected its ability to exist as a state. It was therefore not just a zero-sum absolute gains setting with a gain for one resulting in a loss for the other, but a question of security and sovereignty itself. When these types of issue are on the line, most scholars agree that states are likely to focus on relative (rather than absolute) gains.¹³

Finally, in this relative gains setting, Serbia had little interest in reaching an agreement. Its interests were already reflected in the current status quo, and it therefore had little incentive to offer any concessions in an attempt to bring about an agreement. Given Serbia's lack of incentive to offer concessions, and the fact that Kosovo was concerned with relative gains and sovereignty, Kosovo had no incentive to offer concessions in return. Any concessions Kosovo would have had to make to bring about an agreement would have required giving up its pursuit of independence – something it was not willing to do.

Taking these three factors together – Kosovo's lesser bargaining power, the relative gains situation, and the fact that Serbia placed little to no value on reaching an agreement – we would expect that if they continued under these bargaining rules, the result would likely be that both sides would be unwilling to make concessions.¹⁴ An agreement would not be reached, and UNSC Resolution 1244 would remain in effect. Because this outcome was clearly not in Kosovo's interest, Kosovo had an incentive to change the rules of the game. Such a change in the rules would be needed for Kosovo to create a bargaining context in which it could win concessions and achieve independence.

Negotiation 1: bargaining strategies adopted

Together, these contextual rules structured Serbia and Kosovo's bargaining interaction in a way that put Kosovo at a significant disadvantage. If those contextual rules remained unchanged, it was not likely to be able to achieve its interests. Kosovo therefore had an incentive to change the rules of the game in order to improve its bargaining position.¹⁵

However, Kosovo did not adopt a rule-changing bargaining strategy. Instead, both Serbia and Kosovo adopted confrontational *rule-compliant*

¹³ Waltz 1979; Lipson 1984; Mearsheimer 1994/1995.

¹⁴ See the logic underpinning hypothesis 3.

¹⁵ This argument follows the logic underpinning hypothesis 6.

bargaining strategies – and ones that were consistent with the incentives and constraints created by the bargaining context. Neither side offered concessions to the other, and as a result, no agreement was reached in these negotiations. The result was that the status quo continued – an outcome that did not reflect the interests of Kosovo. Kosovo remained under UNMIK control, and UNSC Resolution 1244 remained in effect, protecting the territorial integrity of Serbia.

Why did Kosovo adopt a rule-compliant strategy instead of changing the rules to try to get a different outcome? As argued throughout the book, two key factors are necessary for a state to be able to adopt a rule-changing strategy – it has to have an incentive to change the bargaining context as well as the capability to do so. Despite the fact that Kosovo had an *incentive* to change the rules of the game, it did not have the *capabilities* it needed to be able to do so.

Kosovo lacked both the economic and military resources to be able to change the contextual rules in its favor. First, Kosovo did not have the economic resources to adopt an effective cooperative rule-changing strategy. With the resources it had, Kosovo could not provide Serbia with a side payment large enough to offset the cost Serbia would feel from giving up what it viewed as a significant part of its territory (Kosovo), as well as a territory that was a centerpiece of its historic and religious heritage. Kosovo also did not have the economic and/or military resources it would need to be able to effectively adopt a confrontational rule-changing strategy. With a GDP that was less than one-seventh of the GDP of Serbia,¹⁶ Kosovo's economy was too small relative to Serbia to be able to effectively cut off trade relations in order to force Serbia's hand regarding the question of independence. Kosovo also did not have the military capability to credibly threaten Serbia with military action in order to extract its desired concessions. The Kosovo Albanian groups had been demilitarized under UN Security Council Resolution 1244, and the presence of the NATO-led peacekeeping force in Kosovo (KFOR) lessened the credibility of any violent threats Kosovo might have used against Serbia.

Kosovo's ability to use both cooperative and confrontational rule-changing strategies to improve its bargaining position was therefore extremely limited, if it existed at all. Despite its incentive to change the rules of the game, Kosovo therefore did not have the material capabilities necessary to do so. These capability limitations forced it to comply with

¹⁶ The GDP of Kosovo in current US\$ in 2006 was \$3,915,494,726 and the GDP of Serbia in 2006 was \$29,221,081,587. This data comes from the World Bank.

the contextual constraints that it faced. Doing so resulted in neither side offering concessions to the other, leaving them with the current status quo – an outcome that clearly favored the interests of Serbia.

Additional background

Two sets of negotiations took place in parallel to the UN-backed talks between Kosovo and Serbia. While neither directly related to the Kosovo status process, both of these negotiations played a role in defining the context of the next several rounds in that process. Taking into account the existence of these negotiations, as well as where they stood at a given point in time, is important for understanding the overall context of the Kosovo status process.

First, negotiations were taking place among the EU member states themselves, to create a mission that they would send to Kosovo when Kosovo achieved independence.¹⁷ They viewed the EU's future role in Kosovo as important for two related reasons. First, in a post-status Kosovo, UNMIK would no longer be the administering authority. However, some international presence would be needed to establish and maintain the rule of law in the province. "Nobody wanted to have a big black hole in the region. That would have a serious effect on our security within the EU – drugs, and trafficking women, and money laundering, etc. It had to be done."¹⁸ Second, the EU member states believed that the international actor that should fulfill this role was the European Union. "[Kosovo] is one part of the Balkans problem which everybody has acknowledged is a European problem. So we all saw that the European Union [must work] to solve this issue. It would have been a total failure of the European Union to not do anything [in Kosovo]."¹⁹

In April 2006, the EU states agreed to send a planning team to Kosovo to begin preparations for a full EU mission, which would be deployed once Kosovo gained independence and UNMIK was removed. The planning team was deployed to Kosovo, and began working with UNMIK to learn about their policies, strategies, and day-to-day operations. The internal negotiations for the planning of the EU mission were assisted by

¹⁷ The interviewees all referenced that the mission would be sent "when . . ." Not a single interviewee used the word "if."

¹⁸ Interview with ambassador in the Political and Security Committee of the EU, May 14, 2010.

¹⁹ Interview with ambassador in the Political and Security Committee of the EU, May 7, 2010.

the information coming from the interaction between the EU planning team and UNMIK, and continued behind the scenes throughout the next several years of the Kosovo status process.²⁰

A second set of negotiations was also important. At the same time as it was engaged in these status process negotiations with Kosovo, Serbia was taking steps toward possible future membership in the EU, and was therefore engaged in accession negotiations with it. However, in May 2006, EU integration talks with Serbia were suspended because of Serbia's failure to hand over Ratko Mladić to the UN War Crimes Tribunal. This was an extremely important issue for several EU member states such as Belgium, the Netherlands, and the United Kingdom.²¹ The spillover from this issue stalled Serbia's accession talks, which became an important source of EU leverage later in the Kosovo status process.

Negotiation 2: Kosovo–Serbia negotiations over the Ahtisaari proposal, 2007

As these outside negotiations were going on, the Kosovo status process proceeded. In February 2007, Martti Ahtisaari unveiled a proposed plan for Kosovo's future, calling for "supervised independence" for the province. The plan did not propose full independence for Kosovo, but it specified that Kosovo would be entitled to sign international treaties and to apply for membership in institutions such as the EU, the UN, the International Monetary Fund, and the World Bank. The plan also called for NATO to continue to provide security in Kosovo, while the European Union would gradually take over from UNMIK responsibility for rule of law matters.²²

In general, the plan was supported by the United States and the states of the EU, which felt that what amounted to de facto independence for Kosovo would allow the EU to send its mission to Kosovo and help stabilize the region. Leaders in Kosovo also supported the plan, though it fell short of their main goal of full independence from Serbia.²³

²⁰ This was evident from all interviews in 2010, as the details of these internal EU negotiations were one of the key points of discussion in all interviews conducted. All interviewees thus provided vast evidence regarding the internal EU process, and the role of the EU planning team in providing the information necessary to create the Concept of Operations and Operation Plan for the creation of the full EU mission being worked out in CivCom and the PSC.

²¹ Interview with ambassador to PSC, May 7, 2010.

²² See UN document S/2007/168/Add.1, Arts. 1, 13, and 14. See also [Rettman \(2007a\)](#) for a concise summary of these key points.

²³ See the discussion in *The Economist* 2007.

In contrast, Ahtisaari's plan was strongly opposed by Serbia and Russia. As Serbia's president explicitly stated, "‘Serbia and I . . . will never accept Kosovo's independence.’ . . . And while the plan does not mention statehood for Kosovo . . . it ‘opens the possibility for Kosovo's independence.’"²⁴ As a veto-wielding member of the Security Council and ally of Serbia, Russia threatened to block any plan for Kosovo to which Serbia did not agree.²⁵ Supporters of the Ahtisaari plan therefore recognized that finding a way to gain the support of Serbia was necessary in order to move things forward.²⁶

Shortly after the Ahtisaari plan was revealed, a new round of UN-backed negotiations began between Kosovo and Serbia, with that proposed plan as the starting point for discussion. While these negotiations were officially characterized by talks between Kosovo and Serbia, they were now part of a larger political process taking place between Kosovo, the United States, and the states of the European Union on one side, and Serbia and Russia on the other.

These Contact Group states became involved more explicitly in the Kosovo–Serbia talks for several reasons. First, any agreement on the Ahtisaari proposal would have to be approved by the UN Security Council because it had been officially presented to the UN Security Council for consideration. The United States, key states of the EU, and Russia were therefore involved in the process, simply because of their role in the Security Council.

More importantly, these states also had their own national security interests at stake in the outcome of the Ahtisaari proposal negotiations. For Russia, ensuring that independence was not granted to a "breakaway" region without the permission of the home state was of great importance. Like Serbia, Russia also faced independence movements from potential breakaway regions such as Chechnya. The precedent that would be created by granting independence to Kosovo without the agreement of Serbia was therefore one Russia did not want to set. Doing so was seen as a threat to Russia's own sovereignty as well as Serbia's.²⁷

On the other side, the EU states had real security concerns at stake in the outcome of the process. Internal security problems plagued Kosovo,

²⁴ Quote drawn from [Smith 2007](#).

²⁵ [Rettman 2007a](#); [Spongenberg 2007a](#).

²⁶ Interviews 2010.

²⁷ As described in *The Economist* (2007), doing so would be "acquiescence to the opening of a dangerous 'Pandora's box,' from Russia's point of view, of disputed post-communist borders."

as UNMIK had been unable to fully establish the rule of law in the province. These rule of law problems were leading to a spillover of crime into neighboring Europe.²⁸ Absent some major change in the political situation, this did not seem likely to end. The status quo therefore entailed real security costs for Europe. As one EU official stated, “Because of the spillover of crime, drug trafficking, human trafficking, and many other kinds of smuggling, there was significant pressure from the ministries in charge of internal security in the [EU] member states to do something about Kosovo.”²⁹ The EU states therefore had a particularly strong interest in seeing an agreement reached so that the Ahtisaari proposal could be implemented. Only then could the EU deploy its mission to Kosovo, and begin to deal with the root cause of these rule of law issues. A lack of progress on the Kosovo issue was thus viewed as a direct threat to Europe’s security.

The United States was also concerned with the current situation. The main goal of the United States in these negotiations was stability in the region, and it viewed the status quo political arrangement as highly unstable.³⁰ Even the commander of the NATO mission in Kosovo was admitting the instability of the current situation. “Jaap de Hoop Scheffer, NATO’s secretary general, warned in Belgrade, Serbia, on Friday that there was a danger of going from a ‘controlled to an uncontrolled’ outcome unless both sides showed restraint.”³¹ The United States therefore wanted an agreement to solidify the political situation in the Balkans. With these interests at stake, the Contact Group states therefore took an active role in the negotiations over this proposal.

Overall, this negotiation was characterized by several factors that, together, created an incentive for the EU states to adopt a cooperative, rule-changing bargaining strategy. First, as in the first round of talks, the status quo political arrangement would continue if an agreement was not reached. As just discussed, the status quo was very costly for Kosovo, the United States, and the EU. In contrast, it largely reflected the interests of Serbia, and therefore Russia as well. These valuations of the no-agreement outcome by both sides put Kosovo, the United States, and the EU in the weaker bargaining position relative to Serbia and Russia.

²⁸ Even the EU states that were not willing to accept a unilateral declaration of independence by Kosovo felt these spillover effects, and very much wanted to deal with them (interviews with representatives from [Romania](#), [Slovakia](#), [Cyprus](#), and [Greece](#) (2010)).

²⁹ Interview with member of EULEX Planning Team, May 20, 2010.

³⁰ For evidence of this, see the discussion of [Dempsey](#) (2007) and [Bilefsky](#) (2008a, 2008b).

³¹ [Hoge](#) 2007b.

Moreover, because the status quo was beneficial to Serbia and Russia, they placed little value on reaching an agreement.

Finally, in addition to the relative gains focus that Kosovo and Serbia had (as described above), the Contact Group actors on both sides were also likely to have been concerned about relative gains in these negotiations. On the one side, EU states had significant concerns about their own security. While to a lesser degree, the United States was also concerned with issues of security – worrying about instability in the region and how its own interests might be affected by such instability.³² This was particularly the case because there was a NATO mission on the ground in Kosovo, with a US troop presence.

On the other side, Russia was concerned with threats to its sovereignty. As was specifically pointed out, these negotiations “pitted sovereignty and self-determination against each other.”³³ Not only did Russia face its own political breakaway regions, but the post-Soviet region, more broadly, was characterized by border disputes and difficult ethnic relations.³⁴ Protecting the sovereignty of Serbia was therefore important to Russia, not only in principle, but also for reasons of national interest. The main UN actors therefore had security and sovereignty interests at stake, leading them to likely place a central focus on the relative gains stemming from an agreement, as did Kosovo and Serbia.

Taking these three contextual factors together, if the states complied with the bargaining rules, both sides would be likely to offer few to no concessions to the other, and an agreement would not be reached.³⁵ Given the costliness of the no-agreement outcome for the EU states and Kosovo, in particular, both had a strong incentive to change the rules of the game so that an agreement could be reached and the status quo would not remain. In addition, while both Kosovo and the EU faced direct security threats from the current status quo, the EU clearly had greater economic and military capabilities than Kosovo, and thus a greater ability to alter the contextual rules governing the negotiation. While both had an incentive to change the rules, the EU states were in a better position to be able to do so. We would therefore expect to observe the EU adopting a rule-changing strategy.³⁶

³² Dempsey 2007; Bilefsky 2008b.

³³ Hoge 2007a.

³⁴ *The Economist* 2006.

³⁵ This prediction stems from hypothesis 3.

³⁶ This prediction stems from hypothesis 6.

To understand the cooperative/confrontational nature of the rule-changing strategy that the EU would be likely to adopt, we need to analyze the relationship between the EU and Serbia. Not only were the EU and Serbia taking steps toward Serbian membership in the EU, but many EU states had strong ties with it. For example, Greece was one of the top investors in the Serbian economy, and Greece and Serbia had strong religious and historical ties.³⁷ Given that such beneficial connections existed between several EU states and Serbia, we would expect that any rule-changing strategy the EU might adopt would be cooperative in nature.³⁸

Based on the theory presented here, we would therefore expect the EU to change the bargaining context by altering the issue linkage structure in a cooperative way by offering Serbia some side payment in an attempt to get Serbia to accept the Ahtisaari proposal.

Negotiation 2: bargaining strategies adopted

The strategies adopted by the EU states in an effort to influence this round of negotiations are consistent with this prediction. In February 2007, the member states of the EU agreed to offer to restart accession talks with Serbia, even before it had captured all its war crimes fugitives, such as Ratko Mladić – the issue over which talks had originally been suspended. This agreement – which was pushed by states with close ties to Serbia such as Austria, Italy, Slovakia, Poland, Hungary, the Czech Republic, and Slovenia³⁹ – provided an explicit linkage between Serbia's accession to the EU and the Kosovo status question. As one observer argued, "The EU-integration question and the Kosovo status issue [had] become intertwined in EU thinking, with the [proponents of restarting the talks] arguing that an EU-integration gift could help Serbia swallow a UN blueprint for putting Kosovo on the road to independence."⁴⁰ In other words, the EU made this offer as a potential "sweetener" to Serbia in return for its acceptance of an outcome from the Kosovo status

³⁷ Interview with representative from Greece, May 17, 2010.

³⁸ This prediction stems from hypothesis 7.

³⁹ Interviews 2010.

⁴⁰ This quotation comes from Rettman and Beunderman (2007). Additional evidence of this linkage was discussed throughout the interviews conducted. The linkage between these issues is also evident in additional media coverage of these negotiations (e.g., *The Economist* 2008), and is still evident in more recent interactions (e.g., *The Economist* 2010, 2011).

process that was less than ideal. This type of action demonstrates a strategy designed to alter the set of issues on the bargaining table in a way that would make Serbia willing to be more flexible on the Ahtisaari proposal. As one interviewee summarized, “It’s linked very much in the understanding of the Serbs. They know exactly where we are on it. And the only hope we have is that this prospective of them moving into the EU will be incentive enough for them to stand down.”⁴¹

The adoption of this type of rule-changing strategy by the EU is consistent with the predictions of the theoretical argument. However, the *effect* of this strategy was mixed. For the most extreme nationalists in Serbia, this sweetener was still not enough to make them willing to accept Kosovo independence. As Prime Minister Koštunica stated, he would not make concessions on Kosovo for the sake of EU ties.⁴² Other Serbian leaders, however, were not as extreme. In the talks that followed between Kosovo and Serbia, Serbia offered Kosovo leaders significant autonomous governing powers over the region, as a (partial) concession – still insisting, of course, that Kosovo must remain in Serbia.⁴³ The sweetener therefore did increase Serbia’s flexibility to some degree, but did not increase it enough to make Serbia willing to accept Kosovo independence. Linking the issue of EU accession thus moved Serbia’s position regarding the Ahtisaari proposal in the right direction, but the new issue was not “important enough” to Serbia to get it to accept a proposal that meant the *de facto* independence of Kosovo. The overall result was therefore, again, an inability to reach a bargaining agreement.

Negotiation 3: UN Security Council negotiations over draft resolution, May 2007

Following these two failed rounds of negotiations, the United States and the European Union decided to work directly through the UN Security Council to try to achieve independence for Kosovo. To do so, they prepared a draft UN Security Council resolution based on the Ahtisaari proposal. In May 2007, they circulated the draft resolution to other Security Council members, with the hope of reaching an agreement on this resolution by the end of June.⁴⁴ The draft resolution stated that “the

⁴¹ Interview with ambassador to PSC, May 7, 2010.

⁴² Rettman and Krasniqi 2007.

⁴³ Statement taken from Rettman and Krasniqi 2007. See also Dempsey (2007).

⁴⁴ For example, see the discussions by Rettman (2007b), Rettman and Krasniqi (2007), and Spongenberg (2007b).

provisions of this resolution shall replace the provisions of [the June 1999 UNSC Resolution 1244],” which reaffirmed “the commitment of all member states to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia,” to which Serbia was recognized as a successor state.⁴⁵ The key clause on “replacing” 1244 would legally free Kosovo to declare independence and the United States and EU states to recognize the new country.⁴⁶ It would also empower the EU to take over administrative and police supervision of Kosovo from UNMIK, whose authorization came from Resolution 1244.⁴⁷

The negotiations within the UN Security Council over this draft resolution took place in May and June 2007, and were some of the most important, and interesting, negotiations involved in the Kosovo status process. Discussions on this draft resolution were characterized by talks between the United States and the EU states on the Security Council (with the United Kingdom most front-and-center) on the one side, and Russia on the other. Because these talks were taking place in the Security Council context, they were first and foremost between these states. As stated by Enver Hoxhaj, a member of the Kosovo Albanian negotiating team, “The real talks have . . . begun. They are not between Pristina and Belgrade, but between the members of the Contact Group.”⁴⁸ However, because this issue directly involved the interests (and future) of Kosovo and Serbia, they were also involved in the discussions. The other members of the Security Council that did not have a direct interest in the outcome of the negotiations were involved, but largely at the margins of the discussions because they had few interests at stake.⁴⁹

This negotiation was characterized by three main factors which created a strong incentive for the United States and the EU states to adopt confrontational, rule-changing bargaining strategies. First, the status quo (which was still characterized by Resolution 1244) defined the states’ alternatives to agreement. As before, this no-agreement outcome reflected the interests of Serbia (and its ally, Russia), and was costly for Kosovo (and its US and EU allies). In addition, by the time these

⁴⁵ Recall, Kosovo was not recognized as a successor state because it was formally a province of Serbia rather than its own republic.

⁴⁶ For example, see discussion by [Rettman and Krasniqi \(2007\)](#).

⁴⁷ [Spongenberg 2007b](#).

⁴⁸ Quote drawn from *The Economist* (2006).

⁴⁹ For evidence of this, see the statements made by these states in the summary documents of Security Council meetings.

negotiations began in mid-2007, several contextual changes had occurred which made the status quo even more costly than it had been previously.

For the United States, the status quo was now even more costly because it had invested significant political capital into drafting and backing this new UN Security Council resolution. A failure of the Resolution would therefore be seen publicly as a failure on the part of the United States to solve the Kosovo problem.⁵⁰

For Kosovo's leadership, the failure of the Security Council to reach agreement on this Resolution was seen as more costly than before because their domestic public was impatient for independence and already angry over having to wait so long for it. Violent demonstrations had begun to break out in opposition to these delays. Indeed, this violence was even highlighted by Ban Ki-Moon, the UN Secretary-General, in his report to the Security Council and recommendation that the Ahtisaari proposal be adopted.⁵¹ Further delay was only likely to lead to even more violent outbreaks in Kosovo.

Finally, the no-agreement outcome was also extremely costly for the European Union. Not only were the EU states still suffering significant security costs due to the lack of strong "rule of law" institutions in Kosovo, but by this point they had also invested over a year in the planning and preparation of an EU mission to go to Kosovo to help deal with this problem.⁵² However, the mission needed to be "status neutral" in order for it to be deployed. The EU needed either the permission of Serbia or the passage of a Security Council resolution for the mission to be able to deploy. The reason is that under international law, a state cannot place a presence in another state unless it has the permission of that state or it is supported by a UNSC resolution. Sending an EU mission to Kosovo without such support would be a political statement that Kosovo had the power to give permission for another state to enter its territory – territory that was legally still the territory of Serbia. It would have been a *de facto* recognition of Kosovo's statehood (i.e., the mission would not have been "status neutral"). Several EU states were unwilling to allow this to happen because it would amount to expressing the legitimacy of a region's breaking away from the "home" state without its permission. Like Russia, several EU states faced their own potential break-away regions, and

⁵⁰ For evidence of the strong level of US support for Kosovo, see Bilefsky and Wood 2007; Bilefsky 2008a, 2008b; Kulish and Chivers 2008; Videmsek and Bilefsky 2008.

⁵¹ This is explicitly laid out in UN document S/2007/134, para. 3. Media coverage also highlighted these problems (e.g., Bilefsky 2007).

⁵² Dempsey 2007; Interviews 2010.

thus feared the precedent such support would set.⁵³ An agreement in the Security Council (or between Kosovo and Serbia) was therefore necessary for the EU to move forward with a mission it had been planning for over a year – and which many EU states felt was necessary to protect their security.

In contrast, Russia and Serbia still had little interest in reaching an agreement. Agreement would mean replacing Resolution 1244 with a new resolution based on the draft proposal presented by the United States and the EU. Doing so would move Kosovo toward independence. This option reflected a worse option for Serbia (and for Russia) than remaining at the status quo. As with the previous negotiations, both states therefore had little interest in reaching an agreement. With Kosovo, the United States, and the EU states facing a costly alternative to agreement, while Serbia and Russia did not, Serbia and Russia again sat in the more powerful bargaining position in the negotiations.

Given that these negotiations were also characterized by a focus on relative gains, with the more powerful side placing little value on reaching an agreement, we would expect the United States, Kosovo, and the EU to have had a strong incentive to adopt rule-changing strategies. Given the need for a state to have significant material capabilities to be able to carry out such a strategy, we could therefore expect to observe the United States and EU acting on those strategic incentives.⁵⁴

Finally, to understand the cooperative/confrontational nature of the rule-changing strategy they were likely to have adopted, it is important to again analyze the relationship between the bargaining states. The key opponent for the United States and the EU in these Security Council negotiations was Russia.⁵⁵ Both the United States and the EU had very difficult relations with Russia around this time. In the months preceding these negotiations, US–Russian relations faced several obstacles including Russia's unwillingness to agree to put sanctions on Iran, which the

⁵³ For example, this was true for Spain with its Basque region, for Romania and Slovakia with their large Hungarian populations, and for Cyprus with Northern Cyprus. Greece also clearly fell in this coalition. However, whether it was involved because of concerns with Macedonia, or simply out of support for Cyprus, is unclear from the available evidence (interviews 2010).

⁵⁴ This prediction stems from the logic underpinning hypothesis 6.

⁵⁵ The central opponent was not Serbia, because this round of bargaining took place in the UN Security Council. While Serbia was invited to be present (as was Kosovo), they did not have the power to formally influence the decision. As a member of Kosovo's negotiating team confirmed, the "real" negotiation was now between the members of the [UN] Contact Group (quoted in *The Economist* 2006).

United States had proposed. The United States and Russia also conflicted on human rights and energy related issues around this time. As one analyst described it – US–Russian relations were in a state of “depression” at the time of these negotiations.⁵⁶ EU–Russian relations were also tense at this time. Just months before these negotiations, Estonia – one of the EU member states – had relocated a Soviet World War II memorial in its capital, Tallinn. This action stirred up significant political controversy dating back to the Soviet occupation of Estonia, and led to riots between ethnic Estonians and Baltic Russians in Tallinn, as well as the siege of the Estonian embassy in Moscow. Estonia was supported by the other Baltic states and Poland (which were also EU member states) and this conflict led to tensions between the EU, as a whole, and Russia.⁵⁷ Given the lack of close ties between the United States and the EU, on the one hand, and Russia, on the other, we would expect any rule-changing strategies adopted in this round of negotiations to be fairly confrontational in nature.⁵⁸

Overall, based on these contextual features of the interaction, we would expect that the EU and/or the United States would have been likely to adopt a confrontational rule-changing strategy in an attempt to extract concessions from Russia, and thus avoid remaining at the status quo.

Negotiation 3: bargaining strategies adopted

The strategies adopted in these negotiations are consistent with this prediction. Russia threatened to veto the resolution (a confrontational rule-compliant strategy). In response to that threat, the United States threatened to go it alone, unilaterally recognizing Kosovo as an independent state if Russia vetoed the Security Council resolution.⁵⁹

⁵⁶ Gomart (2008) further argues that US–Russia relations went through a period of “stagnation” in 2003–6 and a period of “depression” from 2006–8, and Graham (2008) argues that US–Russian relations were at a very low point, having deteriorated significantly from 2002.

⁵⁷ Interviews with Estonian counselor to COREPER II, May 21, 2007.

⁵⁸ See the logic of hypothesis 7.

⁵⁹ For evidence of this, see Hoge 2007b; Rettman and Krasniqi 2007. It should be noted that among the EU member states, there was not a consensus regarding this particular type of rule-changing strategy – that is, whether or not to support Kosovo independence absent the support of the UN Security Council. In particular, Spain, Romania, Slovakia, Cyprus, and Greece were not willing to support unilateral independence efforts out of concern for the precedent that would be set, and the repercussions that could potentially arise for their ability to deal with their own secessionist movements. The other 22 EU member states did, however, strongly support Kosovo’s independence. No single EU position therefore existed regarding unilateral moves absent a new UNSC resolution.

On both sides there was therefore no movement forward. By July 2007, the draft UN Security Council resolution had been rewritten more than four times in an attempt to secure Russian support, but to no avail. The draft resolution was therefore formally “discarded” by the United States and the EU without an official vote. Recognizing that Russia would not concede without Serbian approval, the United States and the EU agreed to a restart of talks between Serbia and Kosovo.

It might appear, at first glance, that the United States and the EU gave in to Russia and Serbia’s demands by abandoning their proposed resolution and agreeing to a restart of the formal status process talks. However, this was not the end of their bargaining strategies; it was the beginning.

After the failure of the UNSC resolution, the United States began to work with Kosovo behind the scenes to coordinate a unilateral declaration of independence. Kosovo would declare independence, and the United States would immediately recognize it as a state. This would significantly alter the status quo – worsening it for Serbia and Russia. They therefore began to set in motion the actions to *carry out* the go-it-alone threat it had made to Russia. Indeed, as stated by the US ambassador to the UN, “We are determined to move forward, either within the Council or otherwise.”⁶⁰ Several EU states (such as the United Kingdom) were also involved in this coordination effort.⁶¹

The EU states also began to initiate actions behind the scenes in response to the Russian veto. In June 2007, the EU altered its proposed operational plans for the mission it intended to send to Kosovo. Instead of sending the mission under the legal heading of a new UN Security Council resolution, the EU now planned to send the mission under the legal heading of UNSC Resolution 1244, which was already in effect.⁶² Even though Resolution 1244 did not make any reference to an EU mission, as one CivCom representative argued, “Sometimes language can be all things to all men. You read it the way you want to read it.”⁶³ Going in under Resolution 1244 would allow the EU to deploy the mission to Kosovo without any new backing from the UN Security Council, circumventing the objections of Serbia and the veto of Russia in the process. At the same time, it would remain “status neutral” (i.e., it would not be an action that recognized Kosovo as an independent state) because the legal heading was officially a Security Council resolution.

⁶⁰ See quote in Hoge (2007b).

⁶¹ For evidence of this, see Bilefsky and Wood (2007) and Hoge (2007c).

⁶² Interview with ambassador to PSC, May 7, 2010.

⁶³ Interview May 18, 2010.

In line with its proposal to move forward with the mission under Resolution 1244, the member states of the EU reached a political agreement on December 14, 2007, in which they officially called for an EU mission to be sent to Kosovo. This mission (EULEX Kosovo, or EULEX) was designed to be a “technical” mission – that is, a mission not designed to administer or govern, but, rather, one that was simply focused on dealing with everyday rule of law matters on the ground.⁶⁴ The deployment of the mission was founded on an “understanding” between the EU and the UN Secretary-General that UNMIK would hand over its prerogatives to EULEX.⁶⁵

This agreement among the EU member states was of central importance in the Kosovo status process, resulting in a complete shift in the negotiations. It moved the status quo from one in which UNMIK was administering Kosovo to one in which an EU mission was on the ground, preparing to take over from UNMIK. Overall, both the EU and the United States, along with Kosovo, therefore took steps designed to alter the status quo – worsening the no-agreement outcome for Serbia and Russia.

Negotiation 4: Kosovo–Serbia talks, late 2007

While all this was happening “behind the scenes” of the formal status process, the official talks between Kosovo and Serbia had restarted. These talks took place after the defeat of the new UN Security Council resolution by Russia and in parallel with the US and EU rule-changing strategies just described. Given that these internal plans were still ongoing, Russia and Serbia were not yet aware of the full extent of rule-changing moves being adopted by the EU and the United States along with Kosovo.

While Russia, the United States, and the EU had been actively involved in the previous round of Kosovo–Serbia talks, they were less involved in this round. All three states sent representatives to act as “mediators” in the negotiation process, but did not participate as interested actors. They already had actions that they were taking to circumvent this official

⁶⁴ It was the fact that this would be a “technical” mission, and that it was “de-linked” from the question of Kosovo’s status, that allowed for agreement to be reached, even with a unanimity decision-rule, and even though the EU states disagreed on the question of unilateral recognition (interviews 2010).

⁶⁵ This is based on a technical agreement signed in late August 2008. For evidence of this, see [B92 \(2008\)](#) and [Kosovo Compromise Staff \(2008\)](#).

process, and therefore did not have to worry about trying to influence the outcome of these talks directly.

With Kosovo and Serbia as the two key actors in this negotiation, the strategic setting of these talks was therefore very similar to the first round of talks (referred to here as NEGOTIATION 1). The central debate was still over the issue of Kosovo independence. If no agreement was reached, the status quo political arrangement in which Kosovo remained a province of Serbia would continue. This outcome still closely reflected the interests of Serbia, and was opposed by Kosovo, putting Serbia in the more powerful bargaining position. Finally, because the no-agreement outcome closely reflected Serbia's interests, this negotiation (which was still likely characterized by a focus on relative gains) was one in which Serbia – the more powerful state – had little interest in reaching an agreement. We would therefore expect that Kosovo would have an incentive to adopt a rule-changing bargaining strategy in this negotiation, turning the tables on Serbia.

Negotiation 4: bargaining strategies adopted

The strategy adopted by Kosovo in this phase of the status process negotiations is consistent with this incentive. Kosovo refused to offer any concessions, “[taking] an extremely negative attitude within those negotiations.”⁶⁶ Shortly after, Kosovo unilaterally declared independence from Serbia on February 17, 2008, completely changing the structure of the bargaining interaction between the two states. In declaring its independence, Kosovo adopted its own constitution that was set to come into effect on June 15, 2008 – a constitution that gave the UN no role in Kosovo.⁶⁷ Kosovo Albanians thus began to refuse to cooperate with UNMIK. Kosovo's bargaining strategy not only changed the rules of the game through the unilateral declaration of independence, but this

⁶⁶ This quote comes from a statement made by Serbian Prime Minister Vojislav Koštunica after meeting with Russian UN ambassador Vitaly Churkin on December 19, 2007, and before a UN Security Council meeting later that day. It was reported by a Serbian radio network, B92: “Koštunica: No EU Mission without UN Consent,” www.b92.net/eng/news/politics-article.php?yyyy=2007&mm=12&dd=19&nav_id=46289.

⁶⁷ As Secretary-General Ban Ki-Moon stated in his report on UNMIK, “Kosovo's authorities have instituted measures that have sought to effectively assume the [UN] mission's powers. Most significantly, Kosovo adopted a Constitution on June 15 that does not envisage a real role for UNMIK... Kosovo has also passed legislation in a number of fields, whose purpose is to assume legal control and responsibility over areas that were previously reserved to my Special Representative” (S/2008/458, para. 2).

move also resulted in actions that threatened the role of UNMIK in Kosovo.

It is important to note that the contextual rules in both this negotiation (NEGOTIATION 4) and NEGOTIATION 1 created strategic incentives for Kosovo to adopt a rule-changing strategy. Yet it only did so in this negotiation. Why? The difference between the two negotiations that likely led to this difference in strategies was a change in the *capabilities* Kosovo had to back up a rule-changing strategy. By the time this negotiation came about, the United States and the EU had become actively involved in the status process in support of Kosovo – a growth in support and involvement since the status talks between Kosovo and Serbia first began. By the end of 2007, Kosovo could therefore expect that it would have these two powerful actors – as well as their political clout – backing its declaration of independence. This rule-changing strategy was therefore both credible and effective.

First, the United States and the states of the EU had promised political support to Kosovo in its declaration of independence that they had coordinated. Just one day after Kosovo declared independence, it was recognized as an independent state by the United States, France, and the United Kingdom, with states such as Germany, Italy, Estonia, Denmark, Latvia, and Belgium following just days later. In other words, Kosovo's rule-changing strategy was backed by the political power of these important states in the international system – many of whom held a seat on the UN Security Council.

Moreover, when Kosovo made its unilateral declaration of independence in February 2008, it was fully aware of the EU's plan to proceed with its Kosovo mission absent a new UNSC resolution (as it had publicly announced this plan in December). Kosovo therefore knew that the EU, with its mission and material capabilities, would be "on the ground" to back it in its declaration of independence.

Forcing new UN Security Council negotiations

The result was a complete change in the status quo, and thus the alternative to agreement faced by Serbia and Russia, as well. Instead of Kosovo being a province of Serbia governed by UNMIK, Kosovo was now recognized as an independent state by many politically powerful states in the international system. In addition, Kosovo had adopted a constitution which did not specify any role for the UN in its governance, and the EU

was deploying personnel into Kosovo (against the wishes of Serbia) to take over from the UN.

The status quo shifted from one in which Kosovo and the EU faced the more costly no-agreement outcome to one in which the status quo reflected their interests. This change therefore shifted Kosovo, the EU, and the United States into the position of power in the negotiations. The effects of these rule-changing strategies therefore considerably altered the course of the future negotiations.

With their interests fulfilled through the use of these rule-changing strategies, Kosovo, the United States, and the EU no longer needed to pursue negotiations with Serbia and Russia. For them, the status process was over, with Kosovo now standing as its own state. The requirement that accompanied the process – to negotiate with the other side in order to resolve the issue – therefore no longer applied. Moreover, their interests were already reflected by the status quo. They therefore had no incentive to negotiate with Serbia and Russia.

However, Serbia (and Russia) now faced a costly status quo. Because Kosovo and its allies had no incentive or requirement to negotiate (as they saw it), Serbia and Russia had to take some action to gain leverage over the other side to force them back to the negotiating table. To do so, Serbia and Russia would have to make Kosovo, the United States, and the EU place value on reaching an agreement – that is, they needed to worsen the status quo for them. We would therefore expect Serbia and Russia to adopt such a rule-changing strategy.

The relationship between the two sides that now existed also points to the fact that such a confrontational rule-changing strategy would be their likely course of action. The rule-changing strategies and circumvention of the official UN process by Kosovo and its allies had greatly soured their relations with Serbia and Russia. In reaction to Kosovo's declaration of independence and US support of it, Kosovo Serbs attacked the US embassy in Belgrade. As observers argued, "The United States has been a strong advocate of Kosovo's independence from Serbia and was among the first countries to recognize the new state, stoking deep resentment."⁶⁸ The relationship with Russia was also worsened, as Russia had warned that "independence for Kosovo would be a serious affront."⁶⁹

⁶⁸ Videmsek and Bilefsky 2008.

⁶⁹ Cooper, Chivers, and Levy 2008.

In response to Kosovo's declaration of independence and the EU's deployment of EULEX into the territory – actions Serbia considered to be “illegal” – the Serbian government consolidated its grip on Serbian areas of Kosovo – Northern Kosovo, in particular. Kosovo Serbs began instigating mass public disturbances in opposition to Kosovo's independence, and refused to cooperate with Kosovo's newly established political institutions.⁷⁰ The Kosovo Serbs also refused to cooperate with the EU mission currently being deployed on the ground.⁷¹ As one EU official described, “The local Kosovo Serb population looks at Belgrade, feels Serbian, thinks Serbian. And they made the agreement of Belgrade vital. Unless Belgrade [gave] the green light, local Kosovo Serbs [would] not cooperate to allow EULEX to implement its mandate – especially in Northern Kosovo.”⁷²

Russia also worked to hinder the EU mission by exerting pressure within the UN administration to prevent the handover from UNMIK to EULEX.⁷³ “Within the UNMIK machinery, you had quite a few Russians who just sabotaged, delayed, [and] created difficulties. . . . When we didn't receive [UNMIK's] assets, we had to find them ourselves, or we had to make extra budgetary appropriations to finance what we were not supposed to finance.”⁷⁴ As another interviewee confirmed, “The local UNMIK bureaucracy deliberately started delaying, upon instructions from the Russians in New York . . . As a result, our mission got stuck because they could not get the equipment which had been promised to them.”⁷⁵

Because of these confrontational actions by Serbia and Russia, the EU was publicly admitting delays in the deployment of EULEX by May 2008.

⁷⁰ These problems in dealing with the Kosovo Serbs were reflected in the Secretary-General's report on the situation on the ground. “As an expression of their dissatisfaction, Kosovo Serbs expanded their boycott of Kosovo institutions to include the police, judiciary, transportation and municipal administrations. Kosovo Serb police officers in the Kosovo Police Service (KPS) have left their posts in several municipalities in southern Kosovo, while Kosovo Serbs in KPS in northern Kosovo have continued to report to UNMIK international police. Kosovo Serbs have also expressed their dissatisfaction through protests, which have for the most part been held peacefully, although sporadic violence has occurred in northern Kosovo” (UN document S/2008/354, paragraphs 5 and 6).

⁷¹ For general discussions of this problem, see [Bilefsky \(2008b\)](#). This was also backed by multiple interviews with EU officials conducted in 2010.

⁷² This quote comes from an interview with EU state representative on CivCom, May 18, 2010.

⁷³ [Vucheva 2008](#); interviews 2010.

⁷⁴ Interview with a counselor for Political and Security Committee, May 18, 2010.

⁷⁵ Interview with a counselor for Political and Security Committee, June 21, 2010.

EULEX had deployed to some parts of Kosovo, but was still unable to deploy to most of the Serb areas – particularly Northern Kosovo. By June 12, just three days before the Kosovo constitution was set to come into effect, EULEX was still unable to enter Serb-controlled areas of Kosovo, and unable to get the equipment it needed due to delays within the administrative structure of the UN. It was therefore unable to effectively act on the ground. EULEX needed the cooperation of the Kosovo Serbs (and thus Serbia) as well as the cooperation of the UN to be able to effectively carry out its mission. “Without the consent of Belgrade, nothing [could] be achieved for good in Kosovo.”⁷⁶

These strategies increased the costliness of not reaching an agreement for both the EU and Kosovo. Kosovo had declared independence, but its government could not effectively function. Moreover, it could not remove UNMIK without help from the EU mission, and the EU mission could not operate without cooperation from the Kosovo Serbs – cooperation that was made contingent on the existence of an agreement accepted by Serbia (and backed by Russia) in the UN Security Council. The rule-changing strategies adopted by Serbia and Russia therefore forced the EU and Kosovo back into negotiations in the UN Security Council in order to try to come to some agreement that would make Serbia and Russia (and thus the Kosovo Serbs) willing to cooperate.

In an attempt to regain bargaining leverage before the start of negotiations, the EU also adopted a status quo-worsening strategy, cutting off the funding it provided for operations of the economic reconstruction pillar (pillar IV) of UNMIK, “[leaving] UNMIK without the technical capability or budgetary allocation to replace [EU]-funded experts.”⁷⁷ Cutting off these funds left UNMIK even less capable of carrying out its mission in the post-Kosovo-constitution world. Not only did it have to deal with an uncooperative Kosovar-Albanian population, but it now had a reduced ability to do so.

In response, Serbia and Russia adopted another status quo-worsening strategy. On July 17, their foreign ministers held a meeting, the outcome of which was a decision to begin an initiative to ask the International Court of Justice (ICJ) to rule whether Kosovo’s declaration of independence was a violation of international law.⁷⁸

⁷⁶ Interview with ambassador to the PSC, May 17, 2010.

⁷⁷ UN document S/2008/354: p.2.

⁷⁸ More specifically, the decision taken was to put a motion before the next session of the UN General Assembly to make a formal request to the ICJ to make this ruling.

To try to overcome this jockeying back and forth, which was leading nowhere, Ban Ki-Moon announced that he intended to “reconfigure” the UN presence in Kosovo, adding a role for the EU within the UN mission. On June 20, he presented his first proposal for such a “reconfiguration” to the UN Security Council.⁷⁹ According to the proposal, the EU mission would still exist as it was originally envisioned, but it would simply be a part of UNMIK. Moreover, UNMIK would remain in Kosovo rather than leave, as envisioned by the Kosovo constitution.⁸⁰

The reconfiguration was opposed by both Russia and Serbia, who argued that this was simply an attempt to push the Ahtisaari plan through without UNSC approval. They argued that the reconfiguration had to be supported by both parties (Kosovo and Serbia) and approved by the UNSC to be legal.⁸¹ From these discussions, Ban Ki-Moon created a new report, which he presented on July 25, 2008, to the UN Security Council as a proposal for agreement on the reconfiguration of UNMIK. Negotiations took place in July over this proposal.

Negotiation 5: UN Security Council negotiations on UNMIK reconfiguration, July 2008

This new round of negotiations within the UN Security Council was officially characterized by talks between the United States and the EU states (backing Kosovo) on the one side, and Russia (backing Serbia) on the other. Again, because this issue involved Kosovo and Serbia, they were both also involved in the discussions. The other members of the Security Council were largely in the margins, with an interest simply in protecting the role of the Security Council in the international system by ensuring that any outcome that was reached was approved by it.⁸²

The structure of this negotiation arguably created a strong incentive for the adoption of a cooperative, issue linkage rule-changing strategy. First, this negotiation was characterized by a strategic context that differed significantly from the previous Kosovo status negotiations. The no-agreement alternatives that both sides now faced had been significantly

⁷⁹ This proposal is described in UN document S/2008/354, along with Annexes I and II.

⁸⁰ UN document S/2008/354.

⁸¹ See the statement by Boris Tadić, president of Serbia, at the 5839th meeting, as summarized in UN document SC/9252.

⁸² For evidence of this, see the statements of all UNSC states at the 5917th meeting (UN document SC/9366). The focus of almost all the additional UNSC members was the preservation of Resolution 1244 – the only “legal” basis for action.

altered by the rule-changing strategies used by Kosovo, the EU, and the United States and the response from Serbia and Russia.

On the Kosovo side, it was clear that EULEX could not effectively act without cooperation from the Kosovo Serbs, who were unwilling to cooperate with EULEX without the support of Belgrade. The EU mission on the ground therefore faced significant resistance, and was unable to fully act unless some change in the situation came about.⁸³

On the other side, Serbia had a province that had unilaterally declared independence, that was recognized as an independent state by forty-three states in the international system (at the time), and that had its independent status supported on the ground by an EU mission. In addition, UNMIK – which helped to protect Serbia's claim of sovereignty over Kosovo by representing the continued existence of UNSC Resolution 1244 – was crippled by a lack of cooperation by Kosovo Albanians.

Neither side could now accept the current status quo, which had been made extremely costly by the actions of the opposing side. Both sides therefore had an incentive to strike a deal that improved the status quo situation, thus placing value on reaching an agreement. Because both sides had an incentive to come to an agreement (and were bargaining in a relative gains setting), we would expect that both sides would be likely to play by the rules in this negotiation and exchange concessions, all else constant.

This prediction assumes that it was possible for states to engage in a mutually beneficial exchange of concessions. However, an examination of the issue linkage structure shows that the issues laid out by Ban Ki-Moon in this proposal for UNMIK's reconfiguration were not differently valued by the Kosovo and Serbian coalitions. States on both sides were focused on winning on the same largely one-dimensional issue – the scope of EULEX's role in Kosovo.⁸⁴ The states in the Kosovo coalition wanted EULEX to replace UNMIK, or at the very least, for EULEX to have a large role in Kosovo. In contrast, the Serbian coalition wanted a very small role for EULEX, with UNMIK playing the lead role. No other issues were on the table that could offset the costs of giving on this issue for either side.

Even though both sides had an incentive to reach an agreement, the issues were not structured in a way that allowed for an exchange of

⁸³ Interviews 2010.

⁸⁴ This did not *have* to be a one-dimensional issue, and indeed Ban Ki-Moon broke it into multiple issues in his next proposal, as described later.

concessions that could bring about an agreement that both sides could accept. Given that all actors faced a costly no-agreement outcome, they all had an incentive to change the rules in a way that would bring about an issue linkage structure that was differently valued, thus allowing an agreement that improved their position over the current status quo to be reached. We would therefore expect at least one of the actors to adopt a rule-changing, issue linkage strategy in an attempt to create a set of issues that would better lend itself to the possibility for a mutually beneficial exchange of concessions.⁸⁵

Negotiation 5: bargaining strategies adopted

The bargaining strategies that were adopted during this phase of negotiations are consistent with these predictions. Consistent with the non-differently-valued issue linkage structure that they faced, states on both sides did not offer concessions, and an agreement was not reached. They did, however, send “signals” of flexibility on particular aspects of the mission which pointed toward an issue linkage strategy that could potentially be effective in bringing about an agreement.

In these July 2008 negotiations, there was evidence of a softening of the Serbian position – stating that it might accept “a possible role for the EU” under the authority of the UN (and the UN Security Council). However, they still stood firm in their opposition to Ban Ki-Moon’s proposed reconfiguration of UNMIK. On the other side, the EU recognized that it would not be able to take over from UNMIK as it had originally foreseen. The EU therefore began to use the term “reconfiguration” of UNMIK (which was the language that had been used by Ban Ki-Moon), rather than “replacement” of the mission in its own discourse about EULEX. This language was adopted in both the everyday EULEX work on the ground as well as in the political discussions of the mission.

This round of negotiations did not lead to an agreement, although there were “signals” of potential movement by both sides on different aspects of the mission. These signals of flexibility, combined with an inability to reach an agreement, are consistent with the theory presented above. The states wanted to reach an agreement, but the issues were not structured in a way that facilitated such an agreement. No concessions were therefore offered.

⁸⁵ This is the prediction of hypothesis 4.

In response to these failed negotiations, Ban Ki-Moon adopted a strategy that was clearly focused on altering the issue linkage structure. He met with EU and Serbian officials, working to alter the draft proposal by adding specifications that could help make the reconfiguration acceptable to both sides. In doing so, he developed a “six-point plan” with Serbia, according to which police, customs officers, and judges in the Serb-run areas in Northern Kosovo would remain under the umbrella of the UN mission, UNMIK, while their Albanian counterparts would work with EULEX.⁸⁶

His new report incorporated the six-point plan, and specified that “EULEX will fully respect Security Council resolution 1244 (1999) and operate under the overall authority and within the status-neutral framework of the United Nations.” It also stated that “EULEX will submit reports to the United Nations on a regular basis.”⁸⁷ The reporting requirement was newly added, in addition to the other aspects of the six-point plan. These changes broke up the single issue of “EULEX versus UNMIK” into multiple different issues for discussion. This alteration of the issue linkage structure had important effects in the next round of negotiations, as the two sides were now able to trade concessions across the various issues at stake in these more detailed specifications.

Negotiation 6: UN Security Council negotiations on UNMIK reconfiguration, November 2008

The November 2008 negotiations were a continuation of the UN Security Council negotiations from July. The no-agreement alternative for states on both sides remained the same. The EU still had an ineffective mission on the ground due to resistance from Kosovo Serbs, and problems with the transfer of equipment and powers from UNMIK; Serbia still had an EU mission deployed “illegally” in one of its provinces, over which it had no control. Both sides therefore desired to reach an agreement that could improve their current situation.

The key difference in this negotiation from the July negotiation was a shift in the issue linkage structure brought about by the changes Ban Ki-Moon made to his proposed reconfiguration of UNMIK. He still called for a significant role for EULEX in the reconfiguration process. However,

⁸⁶ See Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2008/692.

⁸⁷ S/2008/692. The quotation comes from p. 11 of this report.

he now added the six-point plan, which called for UNMIK to work in Serb-run areas of Kosovo – Northern Kosovo, in particular – and EULEX to work with their Albanian counterparts. Both missions would therefore have significant roles, but those roles would be geographically distinct.⁸⁸ It also called for EULEX to be required to report to the UN Security Council, assuring both Russia and Serbia (and other UNSC members) that EULEX would remain under the control of the UN.

This change in the issue linkage structure created the possibility for mutually beneficial trade-offs which did not exist when the issues were not differently valued. Now that the issues on the table were differently valued by the states, an agreement characterized by an exchange of concessions was possible. Ensuring that the six-point plan remained in effect and that the EU mission reported to, and remained under the control of, the UN Security Council were the most important issues to Serbia (and Russia). Achieving Belgrade's cooperation with EULEX (thus bringing along the cooperation of the Kosovo Serbs), as well as ensuring that a significant role for EULEX continued to exist, were the most important issues to the EU.

The situation was now characterized by a differently valued set of issues in a relative gains setting. In addition, it was characterized by an interest by both sides in reaching an agreement. We would therefore expect both sides to adopt rule-compliant rather than rule-changing strategies, and that those strategies would be cooperative in nature – that is, both sides would make concessions.⁸⁹

Negotiation 6: bargaining strategies adopted

The strategies adopted in this round of negotiations are consistent with this prediction. Both sets of states adopted cooperative rule-compliant strategies, offering concessions to the other side. Despite the significant concessions that were asked of the EU – to accept limitations on both the power and autonomy of EULEX – the EU states conceded and agreed to Ban Ki-Moon's new proposal. They recognized that these concessions were necessary to secure the agreement of Serbia, which they needed in order to have a mission that could function on the ground. As one EU official argued, "We had to pay lip-service to the overall

⁸⁸ Even by 2010, when the interviews for this study were conducted, EULEX still had an extremely limited role in Northern Kosovo (Interviews 2010).

⁸⁹ See the logic underpinning hypothesis 6.

responsibility of the UNSC. And we obliged because this was the only way forward.”⁹⁰

On the same side, despite Kosovo’s own opposition to these changes, it accepted the reality of the situation, conceding on these points as well. “They had to swallow a number of things, like in the UN sphere of things the fact that there was no new resolution; the reporting requirements. They didn’t like that at all, of course. They had thought things would go differently. But they accepted it for the larger objective.”⁹¹

With these significant concessions on the part of EULEX and Kosovo (built into the proposal itself), Serbia conceded, and expressed support for the revised plan and a role for EULEX in Kosovo. It accepted that EULEX would have a significant presence in Kosovo and would replace UNMIK in many of its tasks. Given Serbia’s support for this proposed reconfiguration of UNMIK, Russia agreed to accept the proposal. An agreement was thus reached in the UN Security Council on EULEX and UNMIK.

This exchange of concessions, which led to agreement in the Security Council in November 2008, is consistent with the structure of this negotiation and the incentives it created.

Conclusion: comparisons to highlight key effects

The analysis of the six negotiations above helps to demonstrate the empirical relevance of the predictions generated by the rule-changing aspect of the argument presented in the first part of the book. For each phase of the overall Kosovo status process, (1) the central characteristics of the rules that structured the interaction were identified, (2) predictions regarding the bargaining strategies states were likely to adopt were generated, and (3) those predictions were compared to what actually happened in the negotiation. Overall, the hypotheses generated in Chapter 4 were effective in predicting and helping us to understand when and why states adopted different types of bargaining strategies throughout the Kosovo status process.

To better highlight the role that the contextual rules likely played in driving states’ strategies, we can construct “most similar” case comparisons.⁹² These carefully constructed comparisons provide further support

⁹⁰ Interview with CivCom representative May 18, 2010.

⁹¹ Interview with EU state representative on CivCom, May 14, 2010.

⁹² Przeworski and Teune 1970.

for the theoretical argument by helping to demonstrate the effect that the contextual rules had, while holding constant many other factors.

The state with a costly BATNA. First, it is important to note that in almost all cases in which a rule-changing strategy was adopted, it was the state in the weaker bargaining position that adopted it. In NEGOTIATIONS 2, 3, and 4 – the three negotiations that were characterized by significant rule-changing strategies adopted by one or more of the negotiating states – it was always the weaker state (defined by the states' no-agreement alternative) that adopted the rule-changing strategy. This provides support for the argument that these would be the states that would have the greatest incentive to change the rules of the game.⁹³

The need for material capabilities. It is also important to note that a state can only act on these incentives and actually change the rules of the negotiation if it has the material capabilities needed to do so. A comparison of NEGOTIATIONS 1 and 4 helps to highlight the important effect that a state's capabilities has on its ability to adopt a rule-changing bargaining strategy. In both negotiations 1 and 4, Kosovo faced the same, costly, no-agreement outcome. In both negotiations, Kosovo was in the weaker bargaining position and faced a situation in which Serbia would likely be unwilling to make any concessions, thus imposing the costly no-agreement outcome on Kosovo. However, in NEGOTIATION 1, Kosovo had no real capability to change the bargaining rules. It was economically, politically, and militarily weak compared to Serbia. Any threat or action to alter the status quo in an attempt to extract concessions from Serbia would likely have been ineffective. It was therefore forced to adopt a rule-compliant strategy, even though it had an incentive to change the bargaining rules. In contrast, in NEGOTIATION 4, Kosovo was supported by the political power of the United States and by the material power wielded by the European Union and its mission. With other important factors held constant across these two negotiations, this change in the capabilities backing Kosovo is highlighted as a likely factor that contributed to this variation in its bargaining strategy across these two negotiations.

A powerful state must value agreement. A comparison of NEGOTIATIONS 3 and 6 helps to highlight the effect that powerful states' interest in reaching a bargaining agreement had in these negotiations. Both

⁹³ See hypotheses 5 and 6.

negotiations 3 and 6 were characterized by a focus on relative gains, and both were negotiated among the same set of states. In NEGOTIATION 3, Serbia had no interest in reaching an agreement, and was therefore unlikely to offer concessions to Kosovo (and its allies). This created an incentive for the states in the weaker bargaining position (Kosovo, the United States, and the states of the EU) to adopt rule-changing bargaining strategies, given the costliness of the no-agreement outcome they faced.⁹⁴ This is the outcome that occurred in this negotiation. However, in NEGOTIATION 6, the status quo outcome was now costly for Serbia (and Russia) as well, and Serbia therefore had an interest in reaching an agreement. Because this was, again, a setting characterized by a focus on relative gains, Serbia was willing to offer concessions to reach an agreement. Kosovo (and its coalition partners) therefore had no reason to change the rules, given that they could expect to receive concessions from Serbia. The result was the adoption of rule-compliant strategies in this negotiation. The comparison of NEGOTIATIONS 3 and 6 provides evidence in support of the predictions put forth in Chapter 4. The variation in the value that Serbia placed on reaching agreement in these two negotiations had an important effect on the United States', the EU's, and Kosovo's incentive to adopt a rule-changing strategy.

The issue linkage structure. A comparison of NEGOTIATIONS 5 and 6 helps to highlight the important role of the issue linkage structure. Both of these negotiations were characterized by the same set of bargaining actors, in the same negotiating context – the UN Security Council. Both were also characterized by the same no-agreement alternative for each state. However, in NEGOTIATION 5, the issues were not differently valued, while in NEGOTIATION 6 they were. NEGOTIATION 5, which was characterized by issues that were not differently valued, led to a rule-changing issue linkage strategy by Secretary-General Ban Ki-Moon, who worked together with Serbia and the EU to put together a set of issues that could be acceptable to all. In contrast, NEGOTIATION 6, which was characterized by differently valued issues, led to the adoption of cooperative rule-compliant strategies – the offering of concessions by both sides, and the reaching of a bargaining agreement. This variation in strategies is consistent with the variation in the issue linkage structure.⁹⁵

⁹⁴ This prediction again stems from the logic underpinning hypothesis 6.

⁹⁵ This expectation stems from a combination of the predictions of hypotheses 3 and 4.

The relationship between bargaining states. Finally, a comparison of NEGOTIATIONS 2 and 3 helps to highlight the effect that the nature of the relationship between the bargaining states has on the cooperative/confrontational nature of the rule-changing strategy a state adopts. In both of these negotiations, the same basic group of states was negotiating over the same basic issue – the status of Kosovo. Moreover, in both cases, the EU was in a weak bargaining position, and was the main actor that adopted a rule-changing strategy. However, in NEGOTIATION 2, the context was Kosovo–Serbia talks. The main opponent was therefore Serbia, with which many EU states had very close trade ties. In contrast, in NEGOTIATION 3, the context was the UN Security Council. The main opponent was therefore Russia, with which many EU states had very tense relations at the time. Despite the similarities in these two cases, we would expect that this difference would lead to the adoption of very different types of rule-changing strategies by the EU.⁹⁶ This is what happened. In NEGOTIATION 2, the EU states offered a cooperative “sweetener” to Serbia – a restart to accession talks. In NEGOTIATION 3, the EU states circumvented the UN Security Council altogether, and took actions to bypass the Russian veto and act unilaterally, worsening Russia’s no-agreement alternative. In the light of the other similarities between these cases, the variation in the relationship between the EU and its main bargaining opponent stands out as an important factor helping to explain the cooperative/non-cooperative nature of the rule-changing strategy it chose to adopt.

Summary of the analysis

Overall, the analysis in this chapter demonstrated the effectiveness of the argument regarding when and why states adopt rule-changing bargaining strategies, as well as the predictions regarding how they are likely to do so. Holding many potentially mitigating factors constant, this chapter analyzed six different bargaining interactions involving the same basic set of states in the same basic political context. In each of the negotiations in the Kosovo status process, this chapter showed how understanding the contextual rules of the game can help us to understand why Serbia, Russia, the United States, the EU, and Kosovo adopted the types of bargaining strategies they did. This tightly controlled empirical analysis helped to

⁹⁶ This prediction stems from hypothesis 7.

demonstrate the internal validity of the theoretical argument. Together with Chapter 7, it also helps to demonstrate the argument's generalizability, showing the rule-changing part of the argument at work across a wide range of negotiations.

Throughout this empirical part of the book, the analyses have shown that the contextual rules of the game exert important effects on whether states play by the rules or try to change them, and the cooperative/confrontational nature of the strategies they adopt when doing so. Understanding these effects can help us to understand a wide variety of very complex international negotiations.

Bargaining strategies and beyond

To understand international bargaining, this book showed that we need to recognize that states interact in settings characterized by a particular set of contextual rules. These rules create incentives and limitations that shape the bargaining strategies states can, and are likely to, adopt. However, in many bargaining settings, states are also able to change those rules. When and why they will change the bargaining rules depends not only on their ability to do so, but also on the effects that those rules have. Understanding the effects of the rules governing states' bargaining interactions therefore not only helps us to understand variation in states' strategies when they follow those rules, but also helps us to understand the incentives they have to change them.

The rule-compliant/rule-changing argument introduced in this book helps us to systematically analyze these two important aspects of the dynamic and fluid process of international bargaining. By doing so, it highlights the interactive effects between the rules of the game and the bargaining strategies states adopt. Chapter 3 analyzed variation in states' bargaining strategies when playing by the rules of a given bargaining interaction. It argued that a state is likely to adopt a *cooperative* rule-compliant strategy, offering concessions to other states, under three conditions. All states are more likely to adopt a cooperative strategy (1) when the set of issues that define the bargaining agenda is "differently valued" by states with opposing interests (hypothesis 1), or (2) when the bargaining setting is one characterized by a focus on relative gains and the more powerful state places value on reaching an agreement (hypothesis 3). Finally, (3) when bargaining in a setting characterized by a focus on absolute gains, a state with a costly BATNA (and therefore little bargaining power) is likely to adopt a more cooperative strategy when playing by the rules (hypothesis 2).

In contrast, a state is likely to adopt a *confrontational* rule-compliant strategy, working to extract concessions from other states under several conditions. All states are more likely to adopt a confrontational strategy

(1) when the set of issues on the bargaining agenda is “not differently valued” by states with opposing interests (hypothesis 1), or (2) when they are bargaining in a relative gains context and the state with the better BATNA places little value on reaching an agreement (hypothesis 3). Finally, (3) when bargaining in a setting characterized by a focus on absolute gains, a state with a beneficial BATNA (and therefore with greater bargaining power) is likely to adopt a more confrontational bargaining strategy when playing by the rules (hypothesis 2).

Chapters 5 and 6 showed that these predictions do explain variation in states’ rule-compliant bargaining strategies. Chapter 5 showed these effects at work in the intergovernmental negotiations that characterize the everyday decision-making process of the EU, and Chapter 6 showed them at work in major multilateral trade negotiations that took place in the GATT/WTO.

Building on our understanding of the effects that the contextual rules have on the bargaining strategies states adopt, Chapter 4 analyzed the strategic decision states make regarding when to comply with the rules of the game and when to change them. This decision is influenced by two important factors: a state’s *capability* to adopt a rule-changing strategy and its *incentive* to do so. A state’s capability to adopt a rule-changing strategy is defined by characteristics of the bargaining setting as well as by the state’s own material capabilities. Its incentive to change the bargaining rules depends on the characteristics of the current bargaining rules and the types of rule-compliant strategies they are likely to foster.

Specifically, Chapter 4 argued that a state is likely to have an incentive to adopt a rule-changing, rather than rule-compliant, strategy when it is not likely to win concessions in the current bargaining context. This is likely to occur when (1) the set of issues that define the agenda is not differently valued by opposing states (hypothesis 4), or (2) the state has a costly BATNA, and is thus in a weak bargaining position in the negotiation, and it is bargaining in either an absolute gains setting (hypothesis 5) or a relative gains setting in which the powerful state does not place value on reaching an agreement (hypothesis 6).

Finally, analyzing the cooperative/confrontational nature of the rule-changing strategy a state is likely to adopt, chapter 4 argued that a state choosing to use a rule-changing strategy is likely to adopt a cooperative rule-changing strategy if it is economically interdependent with its bargaining opponent and a confrontational rule-changing strategy if it is not (hypothesis 7).

Chapters 7 and 8 showed that these predictions regarding when, why, and how a state is likely to change the rules of a given bargaining interaction do explain variation in international bargaining across very different types of international negotiations. Chapter 7 showed these effects at work in multilateral climate change negotiations, and Chapter 8 showed them at work in the multiple negotiations that characterized the Kosovo status process – negotiations that touched on central issues of state security and sovereignty.

Part I of the book therefore presented a new rule-playing/rule-changing theoretical argument that can be used to explain why states do what they do when engaged in bargaining interactions. Part II then provided empirical support for this argument, showing how it helps us to understand and analyze a wide variety of complex cases of international bargaining.

Implications of the argument

The argument presented in this book has two important implications that are worthy of further discussion. The first implication relates to the different roles that *power* plays in international bargaining processes. As shown throughout the book, *different sources of power* are important for different reasons over the course of a bargaining process. The second implication relates to the need to take into account the role of *time* in analyses of international bargaining.

Implication 1: power in international bargaining

The first implication that stems from the rule-compliant/rule-changing argument is the fact that different types of power matter in different ways in international bargaining. Power defined in terms of the beneficial nature of a state's best alternative to negotiated agreement (BATNA) provides *bargaining power* when states must comply with the rules of the bargaining game. In contrast, a state's material capabilities provide the *material power* it needs to change those rules, thus allowing it to shift the bargaining process in its favor. Why do these different factors matter in different ways in international bargaining?

As Barnett and Duvall show, material power is not the only kind of power that matters in international relations, and in many cases is not even the most important. Other, "institutional," sources of

power matter in important ways.¹ Instead of stemming from states' material capabilities, "institutional" power stems from the design of the institutions within which actors interact.² In the context of an analysis of international bargaining, these "institutional" factors correspond to the "the rules of the game" as described here. These rules (or "institutions") shape and constrain the actions of states, sometimes mitigating their ability to use material capabilities to exert control. The BATNA – a key contextual rule that governs states' bargaining interactions – plays a major role when this is the case.

When constrained by the rules of the game, the ability to extract concessions is based on a state's ability to credibly threaten to veto the agreement, thus imposing the no-agreement outcome on all states. The ability to credibly threaten to veto the agreement depends on a state's willingness to accept this no-agreement outcome. This willingness depends on the *value of its BATNA*, not its material capabilities. While material capabilities might sometimes feed into the value of a state's BATNA, states with significant material capabilities can have a costly BATNA in the same way that states with lesser material capabilities can. When states must play by the rules of a particular bargaining game, having a beneficial BATNA therefore provides the bargaining power a state needs to be able to secure concessions from its opponents.

The central role that the BATNA (rather than material capabilities) plays in conferring the bargaining power a state needs to be able to win concessions in rule-constrained negotiations can be seen in both the EU and the GATT negotiations. The statistical analyses of negotiations in both institutions – settings in which states' ability to change the rules of the game is fairly limited – suggest that the value of a state's BATNA exerts a statistically significant effect on the degree of concessions it offers. States with more beneficial BATNAs adopt less cooperative strategies and states with more costly BATNAs adopt more cooperative strategies.³ In both institutions, a beneficial BATNA provides a state with bargaining leverage that can help it win more concessions than it makes. Having a beneficial

¹ In particular, as Barnett and Duvall argue, "structures and processes of global life . . . enable and constrain the ability of actors to shape their fates and their futures" (2005: 3). They identify four different types of power that matter, one of which they refer to as "institutional power." It is this "institutional" type of power that parallels the power that states can derive from their BATNAs.

² Barnett and Duvall 2005: 15–17.

³ To simplify, this discussion focuses only on the absolute gains case. The predicted effects of having a costly BATNA are also demonstrated in the analysis of the more complex, relative gains negotiations.

BATNA is therefore a source of bargaining power. In contrast, a costly BATNA is a source of bargaining weakness, as it leaves a state in a position where it will likely be forced to make significant concessions to its bargaining opponent.

The early rounds of the GATT negotiations illustrate these effects. For example, one of the negotiations of central importance to the developed states dealt with issues related to the protection of intellectual property rights (IPRs). The developed countries had a significant number of patents and trademarks granted to their industries that they wanted to have protected at the international level. However, the protection of these intellectual property rights varied widely across different states, with many developing countries not enforcing the protection of these IPRs to any significant degree. Many of the developing states even wanted to keep patent protections from affecting their ability to manufacture generic pharmaceutical drugs. Despite the fact that they had greater material capabilities relative to the developing countries, the developed countries faced a more costly BATNA because the status quo did not reflect their interests. In contrast, it did reflect the interests of many developing countries.

The strategies adopted in the negotiating group dealing with this issue are consistent with the bargaining power/weakness conferred by the states' BATNAs, but does not follow from the variation in their material capabilities. As discussed in detail in Chapter 6, many developing countries stated that they had no intention of signing on to an IPR agreement. They even argued that the GATT was not an institutional forum in which agreements on intellectual property rights – even the trade-related aspects of them (TRIPs) – should be discussed.⁴ By arguing that they would not even be willing to discuss these issues, they, in essence, “vetoed” the agreement on TRIPs during this phase of the Uruguay Round negotiations. Despite their greater material power, the developed states were forced to accept that increased international cooperation over intellectual property rights would not move forward.⁵

However, this does not mean that material capabilities do not matter in international negotiations. Indeed, states' economic capabilities are central for their ability to adopt rule-changing strategies. This was

⁴ See GATT document MTN.GNG/12, para. 10.

⁵ Note that this discussion refers to the negotiations in the TRIPs negotiating group from 1986–90. It does not refer to the negotiations over the Draft Final Act, where this TRIPs negotiation was linked to other issues of importance to the developing states – a linkage that shifted the relative BATNAs of these coalitions, as discussed in detail in Chapter 6.

demonstrated in the empirical analyses throughout the book. To illustrate, consider again the TRIPs negotiations and the strategies the developed states adopted in reaction to the impasse they faced in the early years of the Uruguay Round. As described above, the United States and states of the European Community – actors representing the two largest markets in the GATT – found themselves in a weaker bargaining position in several negotiating groups that were important to their interests, including the TRIPs negotiations. To alter the value of their BATNA relative to the BATNA of the developing states, the United States and EC states used the influence yielded by their market power to push for the multiple different negotiating groups to be linked together – changing these separate negotiations into a “single undertaking.” By linking negotiations like TRIPs to negotiations in which the developing states were in a very weak bargaining position, they were able to worsen the BATNA of their developing state opponents *across the board* (and thus also on the issues most important to their own interests). As India’s ambassador to the GATT argued, the developing countries needed a multilateral trading system based on principles of non-discrimination and most-favored-nation treatment on issues such as textiles, agriculture, and tropical products much more than the developed countries needed an agreement on issues such as TRIPs.⁶ The rule-changing strategy adopted by the United States and EC states, backed by the influence of their significant market power,⁷ therefore served to worsen the developing countries’ BATNAs on these issues. The bargaining power of the United States and the EC therefore increased.

More generally, material capabilities are necessary for a state to credibly adopt *any* rule-changing strategy. This includes, in particular, threats to use force or sanctions, or to hold an outside issue hostage in order to extract concessions from another state. These strategies are some of the most “coercive” bargaining strategies that a state can adopt, and have therefore tended to be the types of bargaining strategies that receive the most attention from analysts and observers.

It is likely for this reason that IR scholars have focused on the role of material capabilities in international bargaining, and less on the importance of states’ BATNAs – because material capabilities are central to the adoption of the coercive bargaining strategies that have captured the attention of the literature. However, it is also important to note that even

⁶ Zutshi 1998.

⁷ Barton et al. 2006.

if a state has the material capabilities to adopt a rule-changing strategy, it only has an incentive to do so if it is “weak” under the current set of bargaining rules (i.e., if it also has a costly BATNA). Otherwise it could achieve its interests without having to change the rules of the game.

Recognizing these different sources of power in international bargaining – and when, why, and how they matter in the overall bargaining process – is not only important in and of itself, but it also results in a counter-intuitive prediction regarding when and why a state is likely to adopt a rule-changing strategy. Only when a state has a specific *incongruence of power* is it likely to change the rules of the game. States that are powerful on both accounts have the ability, but not the incentive, to change the rules of the game. States that are weak on both accounts have the incentive, but not the ability, to change the rules of the game. States that are powerful under the current set of bargaining rules because they have a beneficial BATNA, but are weak in terms of material capabilities, cannot change the rules of the game, but they also have no incentive to do so. They are already likely to win significant concessions under the current bargaining rules. It is when a state is weak under the current bargaining rules because it has a costly BATNA, but also has strength in terms of material capabilities, that it is likely to adopt a rule-changing strategy.⁸ Having a costly BATNA gives a state the incentive to change the rules, and its material capabilities give it the ability to do so.

This effect is explicitly shown in the statistical analysis in Chapter 7, which deals with the use of issue linkage rule-changing strategies. It is the interaction between having a costly BATNA and significant material capabilities that exerts a statistically significant effect on the likelihood a state will adopt an issue linkage strategy to change the rules.

States’ adoption of more coercive bargaining strategies follows a similar logic. This is highlighted in the analysis of the Kosovo status process presented in Chapter 8. Throughout these negotiations, Kosovo had an incentive to adopt a rule-changing strategy due to the costly BATNA it faced – a BATNA characterized by a lack of independence from Serbia. However, its lesser capabilities relative to Serbia prevented it from adopting such a strategy. It was not until it was backed by the capabilities of the United States and the EU that it was able to use a rule-changing strategy. In contrast, throughout much of the Kosovo status process, Russia and

⁸ This idea of “incongruity” in BATNAs and capabilities leading to the adoption of rule-changing strategies is analogous to the idea of “incongruity” between issue-power and power generally, highlighted by Keohane and Nye (1977), that they argued leads to the demand for regime change.

Serbia did not adopt rule-changing strategies. Because they could achieve their interests under the current bargaining rules, they had no incentive to change them. It was only when they were placed in the weaker bargaining position by Kosovo, the United States, and the EU's change in the contextual rules that Serbia and Russia adopted rule-changing strategies.

Both a state's alternative to agreement and its material capabilities have a role to play in international bargaining. Both provide states with a degree of leverage and power within the bargaining process. The discussion above highlights that it is important to recognize the different roles that each source of power plays when states play by the rules and when they seek to change them. Understanding these different types of power is central to our ability to explain the bargaining behavior of different states in different bargaining settings.

Implication 2: the role of time in international bargaining

The two-part analysis presented here also focuses on how international bargaining processes *unfold over time*, and it lays out a framework for analyzing this phenomenon. As the real-world examples and discussions on this point demonstrate, international bargaining is not a one-shot process with a set of exogenously defined, static inputs. Instead, most bargaining processes consist of *multiple phases*. In the EU negotiations, different phases can come about when outside actors alter the bargaining agenda, or the negotiating context, more generally. For example, in the Services Directive negotiations, the states negotiated throughout 2005 over the original proposal for agreement. These negotiations eventually stalled at the end of 2005. They were picked up in April 2006 in a new "phase," after the European Parliament and the European Commission changed the set of issues on the agenda. In both the GATT and climate change negotiations, multiple negotiating groups were involved in the overall bargaining process – groups that met at different points in time throughout the process. Finally, the Kosovo status process itself was characterized by multiple different negotiations over time, each involving different actors and different strategic situations.

Each of these "phases" can be analyzed as a separate bargaining interaction, defined by its own set of bargaining rules. Within each phase, these rules can be treated as fixed, and their effect on states' bargaining strategies can thus be analyzed. If states *play by the rules* in a given phase of the process, that phase of the bargaining process ends either in agreement or no agreement. Whether or not an agreement is reached depends on the

cooperative nature of the rule-compliant strategies adopted by the states. If an agreement is reached, the overall bargaining process between those states on the issue(s) being analyzed ends. If an agreement is not reached, that phase ends, but the overall bargaining process remains open-ended. It could be picked up immediately or down the road in a new phase of the process.

Breaking an overall bargaining process into phases also allows us to understand how and why states' strategies change over the course of that process. If a state *changes the rules*, that phase of the bargaining process ends and a new phase of the process begins, defined by the new set of rules that the state created. The effects that new set of rules has on states' bargaining strategies can then be analyzed in this new phase. The analysis can continue in this way until the process ends.

By laying out this rule-compliant/rule-changing framework for analyzing and understanding state bargaining strategies, this book took a step toward the systematic analysis of the dynamic and fluid process of international bargaining as it changes over time. The rule-compliant part of the analysis highlighted the dynamics within each phase of the overall bargaining process, analyzing the effects that the rules of the game have on the strategies a state adopts within that bargaining phase. The rule-changing part of the analysis highlighted dynamics *across the phases* of the process, examining when, why, and how states change the rules of the game – thus moving the overall process from one phase to another. In this way, the evolving nature of international bargaining processes can be systematically analyzed, and we can begin to understand the dynamic and interactive effects between the rules of the game and states' bargaining strategies.

While each phase is analyzed separately, the patterns that the analysis identifies provide insights into (1) how states interact within each individual phase of the overall process, and (2) when, why, and how we are likely to see movement across the various phases. These patterns, which are systematically identified throughout the book, yield important information about the overall bargaining process and how it progresses over time.

Bargaining strategies and beyond

The analysis in this book focused on the strategies states adopt in a given bargaining process. However, most studies in the IR bargaining literature analyze the outcome of the bargaining process. While the motivation for

focusing on strategies in this book was to get at the dynamics of the overall bargaining process, it is also important to note the connection between strategies and outcomes. The relationship between these two key facets of international bargaining is more complex than might first appear.

It is often the case that confrontational strategies lead to non-cooperative outcomes and cooperative strategies lead to cooperative outcomes. These effects are not surprising, and are consistent with expectations. If all states involved in a negotiation adopt fairly confrontational strategies and thus do not offer concessions to the other side, a non-cooperative outcome is likely to result – that is, a bargaining agreement is not likely to be reached. This was illustrated by the early phase of the Services Directive negotiations and the majority of the negotiations in the Kosovo status process. In these cases, the adoption of confrontational strategies by opposing coalitions led to an inability to reach a bargaining agreement.

Similarly, the adoption of cooperative strategies by states – offering concessions to the other side – tends to lead to cooperative bargaining outcomes – that is, the reaching of an agreement. This was illustrated by the final phase of the Services Directive negotiations and by the final negotiation in the Kosovo status process. In both cases, the exchange of concessions between states with opposing interests brought about a mutually beneficial, cooperative agreement.

However, confrontational strategies do not *always* align with non-cooperative outcomes and cooperative strategies do not *always* align with cooperative outcomes. First, a failure to reach an agreement can result even if opposing states both offer concessions. This can occur for two main reasons: (1) if the concessions being offered are not large enough for a compromise to be reached to which both states are willing to agree, or (2) if the concessions are made on multiple issues, but not on the issue (or issues) that are most important in the negotiation. In such cases, despite the fact that the states adopted largely cooperative strategies, the end result would still be an overall inability to reach a bargaining agreement.

While it might seem that this phenomenon is likely to be fairly rare in international negotiations, there are many examples of it occurring, several of which are analyzed in this book. For instance, in the first phase of the [Copenhagen \(2009\)](#) climate change negotiations, concessions were offered by states on both sides. However, these concessions were not made on the two most important issues in the negotiation: (1) the question of emission reduction targets for developed and developing countries, and (2) the legally binding nature of those commitments.

Because no concessions were made on these central issues, bargaining impasse remained, and no agreement was able to be reached in the early phases of the negotiation. These same issues also led to bargaining impasse and a lack of agreement in the early phases of the [Cancún \(2010\)](#) climate change negotiations, despite the fact that some concessions were made on other issues by states on both sides. Indeed, it was only after these two key issues were removed from discussion (through the use of rule-changing issue linkage strategies) that agreement could be reached in these negotiations.

Finally, the use of confrontational strategies can sometimes lead to a cooperative outcome – the reaching of a bargaining agreement.⁹ There are two main ways that this can occur. First, a state can sometimes use a confrontational rule-compliant strategy to extract concessions from its bargaining opponent – concessions large enough to bring about a bargaining agreement. This was illustrated, for example, in the EU Financial Perspective negotiations. In these negotiations, the United Kingdom took advantage of the east European states' need for agreement (and focus on absolute gains) to extract significant concessions from them, bringing about an agreement that closely reflected its own interests. The result of the United Kingdom's confrontational strategy was thus a cooperative outcome.

Even more interestingly, a state can potentially use a non-cooperative rule-changing strategy to bring about an agreement where, under the original bargaining rules, one would not have been likely to occur. To understand this somewhat counter-intuitive effect, consider a negotiation in a relative gains setting where the state with the better BATNA does not place value on reaching an agreement. As discussed in [Chapter 3](#), the state with greater bargaining power will not be willing to offer concessions in such a case, because reaching an agreement is not important enough to its interests to make offering such concessions worthwhile. Because of their focus on relative gains, the states with less bargaining power will not be willing to make significant, one-sided concessions in return. The overall result will be that neither side will be willing to make any real concessions, and no agreement will be reached.

However, if the state with less bargaining power adopts a rule-changing strategy – even a confrontational one, such as worsening the opposing state's BATNA – the rules of the game will shift, and an agreement can

⁹ This phenomenon is similar to the idea of “coercive cooperation” put forth by [Martin \(1992a\)](#).

become possible in the new phase of the process. After the adoption of this BATNA-worsening strategy, both states will now place value on reaching an agreement as both now face a costly no-agreement outcome. They are therefore likely to be willing to offer concessions in order to avoid that outcome, allowing an agreement to be reached. The adoption of this confrontational (even coercive) strategy can thus change the rules of the game in a way that can bring about an agreement where, before, one was not likely to occur.

The example of North Korea's use of rule-changing strategies in the 1990s and 2000s helps to illustrate this effect. During this period, North Korea was involved in several negotiations with South Korea and the United States. In these negotiations, North Korea sought to obtain foreign aid from these states, and in the mid-2000s it was also involved in a negotiation in which it sought to convince the United States to end a freeze it had imposed on North Korea's financial assets. These negotiations were characterized by several features that made an agreement unlikely to be reached. First, in all of these negotiations, North Korea faced the more costly no-agreement alternative – an outcome characterized by a lack of aid and a freeze on its assets. Second, the context was one that was likely characterized by a focus on relative gains. In the background of both negotiations was a policy of nuclear development by North Korea. Any gain for North Korea would help it to better sustain itself, allowing it to continue its pursuit of nuclear technology – an action that would increase its military power relative to other states in the international system. Finally, South Korea and the United States, which were in the more powerful bargaining position, both placed little value on reaching an agreement. Providing North Korea with additional assets would help it continue to develop its nuclear program without consequence – an outcome both were against. As predicted in Chapter 3, North Korea's attempts to win aid and to get the financial freeze removed resulted in no agreement in these negotiations.

North Korea therefore changed the rules of the game. It increased the threat of force by engaging in acts of military aggression, worsening the no-agreement alternative for South Korea and the United States in the process. By using this confrontational strategy, North Korea was able to move itself to a more powerful bargaining position. From there, it was able to win the concessions it desired from the United States and South Korea that it was not able to get before it worsened their BATNA.¹⁰

¹⁰ For example, see [Sevastopulo 2007](#); [Song 2007](#); [Choe 2009](#); [Myers and Choe 2012](#).

North Korea's confrontational, coercive bargaining strategy therefore helped to bring about bargaining agreements that before were not likely to be reached. A confrontational rule-changing strategy resulted in a cooperative outcome – the reaching of a bargaining agreement.

While confrontational strategies and non-cooperative outcomes, and cooperative strategies and cooperative outcomes, often do go hand in hand, there are many important examples in international bargaining in which they do not. Analyzing both strategies and outcomes as dependent variables is therefore important for increasing our overall understanding of international bargaining. This book took an important step in this direction by focusing on the bargaining *strategies* states adopt, and systematically analyzing the conditions under which we can expect different states to adopt different strategies.

Overall, this book contributes to the study of international bargaining by presenting a typology of bargaining strategies, as well as an argument about when and why states are likely to adopt these different types of strategy. Part I focused on explaining when and why states are likely to play by the rules that govern a negotiation and when and why they are likely to change them, as well as the cooperative nature of the strategies they adopt when doing so. Part II then demonstrated how we can use this argument to systematically analyze bargaining dynamics in multiple different international negotiations – negotiations in the EU, international trade negotiations in the GATT/WTO, climate change negotiations, and negotiations in the Kosovo status process. By laying out this argument and showing its empirical relevance, this book provides a variety of tools for students seeking to analyze a wide range of international negotiations. It also has implications for our understanding of bargaining power, bargaining outcomes, and the overarching dynamics of the bargaining process. Each of these factors points to important paths for future research in the ever-expanding body of literature that seeks to better analyze and understand the complex process of international bargaining.



Appendix: sources and coding

The information used to code the data for each of the empirical analyses comes from a variety of sources. The reasoning behind the choice of using different sources is twofold. First, the choice of empirical sources to code the data for each chapter was driven, in large part, by the sources that were available for each of the negotiations analyzed. Second, using a variety of different types of data helps to demonstrate how the coding process for each variable can be carried out across a wide array of different cases, where the available data necessarily differs in nature. The sources used in this book include (1) interview evidence with state representatives directly involved in the negotiations that are analyzed, (2) footnoted working documents that lay out states' positions on each issue in a negotiation, (3) state communiqués and summary documents related to each meeting in the negotiations of interest, (4) economic and environmental data, and (5) archived webcasts of bargaining interactions themselves. This appendix describes the process used to code each variable in each of the four empirical chapters (Chapters 5–8).

Data on European Union negotiations

The data for the EU negotiations was largely coded using primary interview evidence. From 2005 to 2010, 146 elite interviews were conducted with ambassadors, deputy ambassadors, and other state representatives directly involved in the intergovernmental negotiations in the EU decision-making process. Where possible, other EU officials who took part in these negotiations were also interviewed. These interviews cover twenty-five of the twenty-seven EU member states.¹ In addition, multiple representatives from each state were interviewed whenever possible.

¹ The only states not covered by these interviews are Spain and Malta, as these are the only states whose representatives did not respond to interview requests.

These interviews also span the various EU intergovernmental institutions, covering a wide range of issue areas in which the EU has competence. The institutions from which state representatives were interviewed are (1) the Political and Security Committee (PSC), (2) the Committee of Permanent Representatives (COREPER) I and II, and (3) the various issue-specific preparatory working groups below the more political, COREPER level. The PSC deals with EU foreign policy issues, and almost all other issues of EU competence are covered by COREPER I and II and their working groups. While decisions are formally taken at the ministerial level above these preparatory committees, studies of EU decision-making show that the large majority of “real” negotiating happens in these institutions.² In addition, the ambassadors from these preparatory committees accompany the ministers to the meetings that take place at the Council of the European Union (Council of Ministers) level. They are therefore extremely knowledgeable about those higher-level interactions as well. Interviews with these particular individuals can therefore illuminate the key dynamics of each overall bargaining process.

The interviews consisted of questions about general patterns of state bargaining interactions in these institutions, as well as questions about the interests and strategies of each state across a broad sample of specific negotiations. These negotiations include (1) a directive designed to liberalize trade in services across the EU, (2) a directive for the Regulation, Evaluation, and Authorization of Chemicals (REACH), (3) the 2007–13 Financial Perspective defining the EU budget for those upcoming years, (4) an agreement designed to criminalize racist and xenophobic behavior, (5) two decisions focused on the limitation of fluorinated gases in EU industries, (6) a directive designed to require battery recycling by all EU member states, (7) a negotiation over the EU funds for scientific research that would be laid out for the next several years, and another focused on the funding for nuclear research specifically, and (8) negotiations over sending EU missions to Georgia, Kosovo, and Somalia, and a naval mission off the coast of Somalia.

The information derived from these interviews was used to construct a large-N dataset coding the contextual rules of the game and states’ resulting bargaining behavior. Thirteen different dossiers are included for analysis, for which there was a total of twenty-three bargaining phases. Footnoted working papers laying out each EU state’s bargaining positions

² Lewis 1998; Hayes-Renshaw, Van Aken, and Wallace 2006.

in each of the EU negotiations examined were also obtained and used to corroborate the interview evidence.

Data on GATT Uruguay Round negotiations

The GATT Uruguay Round negotiations were coded based on individual country proposals laying out states' positions on the issues being negotiated. The documents that were analyzed include all state communiqués that were circulated during the negotiations of all negotiating groups in the Uruguay Round. These communiqués were supplemented with reports circulated by the GATT Secretariat summarizing the various meetings of each negotiating group, as well as Secretariat working papers summarizing the behavior of states in relation to the issues being negotiated. Overall, thousands of documents were analyzed in the construction of this dataset.

Drawing on these original documents, the central issues discussed in each negotiating group were identified. The Secretariat summary reports were used to identify the key issues at stake in each negotiation. These reports, along with state communiqués, were also used to identify states' positions and flexibility on those key issues. Finally, the Secretariat's documents describing states' behavior in relation to each of the key issues, together with scholarly analyses of these negotiations, were used to code the bargaining strategies states adopted. This review of negotiating documents was supplemented with analyses of economic and trade data to help identify states' interests and status quo alternatives on the key issues at stake.

Data on climate change negotiations

The data for the climate change negotiations was collected from an extensive review of UNFCCC negotiations themselves, for which archived webcasts of the actual meetings are available. The analysis of the statements made in these meetings was corroborated using reports from the International Institute for Sustainable Development (IISD)'s Reporting Service, which keeps a detailed log of the statements and events for each day of each COP (the *Earth Negotiation Bulletins*). These original sources were supplemented with analyses of various relevant new sources. The discussion of the Copenhagen negotiations, in particular, was based on an analysis of the audio recording of the negotiations at Copenhagen in 2009

leaked to *Der Spiegel*, and relevant diplomatic correspondences released on Wikileaks. Finally, environmental and economic data was also collected to help identify states' status quo alternative to the climate change agreements.

Data on the Kosovo status process

Finally, the data on the Kosovo status process negotiations was collected by drawing on twenty interviews with EU officials directly involved in the negotiation and activities of the EU mission to Kosovo. These EU officials also had extensive knowledge of the non-EU negotiations in this overall process because of (1) the extensive involvement of both Kosovo and Serbian officials in the EU preparations for its Kosovo mission, as well as in the development of its strategies for dealing with the "on-the-ground" situation after the deployment of the mission, and (2) the intertwining of the EU mission with UNMIK and the negotiations taking place within the UN Security Council. These interviews were supplemented with extensive secondary research, including a review of UN Security Council documents, Secretary-General reports, and media coverage of the issue. Together, these sources provide a comprehensive picture of the multiple negotiations surrounding the Kosovo status process.

The logic underpinning the coding of the key variables in the various Kosovo negotiations is described throughout the chapter dealing with that case. Those coding processes therefore are not repeated here.

Measurement: cooperative/confrontational bargaining strategy

The dependent variable in Chapters 5 and 6 captures the cooperative/confrontational nature of the bargaining strategy adopted by each state in each phase of the bargaining processes that is analyzed. Building on the conceptualization presented in Chapter 2, several categories of bargaining behavior can be empirically identified. The result is a four-category, ordered variable (from 0 to 3) with larger values indicating that a state adopted a more cooperative bargaining strategy, and smaller values indicating that a state adopted a more confrontational bargaining strategy. The *most confrontational* type of bargaining strategy is characterized by the adoption of concession-extracting tactics. Strategies that are only *somewhat confrontational* in nature are strategies that are not characterized by overt attempts to extract concessions, but that are also

not characterized by the offering of concessions. Concessions might be demanded, or even promised, but no overt action is taken to back up those (cheap talk) statements. *Somewhat cooperative* in nature are strategies in which concessions are offered, but these offers consist of relatively minor concessions that do not reflect a willingness to accept the opposing states' positions, and are typically made conditional on the receipt of some concessions in return. Finally, the *most cooperative* type of bargaining strategy is characterized by concession offers that reflect a willingness to accept an opposing state's ideal outcome on one or more of the key issues on the bargaining agenda and/or concessions that are made unconditionally.

Coding based on interview evidence (Chapter 5). In the EU case, interview evidence was used to code this variable. Interviewees were asked questions such as: "What did you actually do when negotiating with the other states on this dossier?" Questions were also asked about the behavior of other state negotiators to fill in gaps as well as to corroborate the claims of other states' negotiators. Given that these were semi-structured interviews, many follow-up questions were also posed to the interviewees in order to get at the key characteristics used to code this four-category variable.

The *most confrontational type of bargaining behavior (category 0)* is characterized by tactics designed to extract concessions from other states. Empirically, this type of behavior consists of tactics such as veto threats or threats to delay agreement. In negotiations subject to a majority voting decision-rule where individual vetoes were not possible, this type of behavior is characterized by tactics aimed at constructing a "blocking minority" – a coalition of states with enough votes to block an agreement. Both types of tactics serve to "hold agreement hostage" in an attempt to extract concessions from opposing states.

The coding of this category of behavior relied heavily on documentary, rather than interview, evidence. Any time there was any documented record (either in the EU documents, or in the news media coverage of the negotiations or negotiation outcomes) which indicated that a state vetoed or voted against a potential agreement, that state was coded as adopting highly confrontational behavior. Beyond this obvious behavior, states that threatened to veto an agreement or constructed (or attempted to construct) a blocking minority were also coded in this category. If an interviewee stated that she used a veto threat, her state was coded in category 0. This evidence was then corroborated through interviews with

other state representatives from her state, as well as representatives from other states. Finally, if an interviewee stated that she was a member of a state that worked with other states to attempt to form a blocking coalition, all of these states were coded in category 0. This evidence was then corroborated through interviews with other states.

A *slightly less confrontational bargaining strategy (category 1)* is defined by the refusal to offer concessions as well as the lack of concession-extracting tactics. It is often characterized by demands for concessions (with no overt tactics to extract those concessions) or promises of concessions that are never carried out. If there was clearly no evidence of concessions and no evidence of concession-extracting strategies, a state was coded in this category. Moreover, evidence of demands for concessions (along with no evidence of concession-extracting tactics) led to a coding of 1, as did evidence of promises of future concessions without any concessions ever being made.

Bargaining strategies that are cooperative in nature can be identified by behavior characterized by the offering of meaningful concessions. When such concessions are made, there is variation in the magnitude of those offers. In particular, such concessions can fall into two main categories. In *the most cooperative type of concession offer (category 3)*, a state makes concessions that signify a willingness to accept the outcome preferred by opposing states on at least one of the central issues in the negotiations and/or concessions that are made unconditionally. *Slightly less cooperative (category 2)* are concession offers that indicate a state's willingness to adjust its position, but the lack of a willingness to accept the most preferred outcome of opposing states on any of the issues.

Coding these categories of behavior relied on interview evidence. When a negotiator was asked what she actually did in the negotiation process, if concessions or a concession exchange were described, that state was coded as being in either category 2 or 3. Follow-up questions about the size of the concessions were then asked.

If the interviewee responded that, "We accepted that XXXXX ...", where XXXXX reflected the ideal position of an opposing state, that state was coded in category 3. Again, these responses were corroborated through interviews with multiple state representatives as well as across time with the same negotiator. State representatives were also asked about the strategies of other states. In addition, after the fact, an analysis of the outcome of the negotiation on that issue was used to further corroborate this coding.

During the follow-up questions about the size of the concessions, if the interviewee responded indicating that, “We gave them some, but we did not give them everything,” that state was coded in category 2. As with category 3, these responses were also corroborated through interviews with multiple state representatives, across time with the same negotiator, and through interviews with other state representatives. They were also corroborated using documentary evidence of the final outcome of the negotiation.

Coding based on original document review (Chapter 6). In the chapter analyzing GATT negotiations (Chapter 6), the same four categories were coded using a review of original negotiating documents from the Uruguay Round of trade negotiations.

A state was coded as having adopted a *highly cooperative strategy* (category 3) if it adopted unconditional liberalization measures in the sector of interest or, in some other way, made concessions in the sector being negotiated without receiving any concessions in return (and even without the promise of future concessions in return). For most economic sectors, such autonomous liberalization measures were cataloged by the GATT Secretariat in its analytical documents. A state was coded as having adopted a *somewhat cooperative strategy* (category 2) if it made a proposal to liberalize its trade in a particular sector (or to make concessions of some kind in that sector), but did not actually do so unconditionally. Again, the GATT Secretariat cataloged all proposals, offers, and requests that were put forth in each negotiating group. I draw on these documents to identify this type of bargaining strategy. Where documentary evidence was not available, secondary resources were used to assess states’ bargaining behavior.

Just as in the case of the EU, a state was coded as having adopted a *highly confrontational strategy* (category 0) if it tried to extract concessions in a particular issue area. The information regarding these types of strategies largely stems from scholarly analyses of the Uruguay Round negotiations. These confrontational types of strategy – while clearly used in these negotiations – were often not explicitly documented, and therefore cannot be gleaned from a documentary review alone. Finally, a state was coded as having adopted a *somewhat confrontational strategy* (category 1) if it did not offer any concessions, nor attempted to extract concessions, nor if it made both a request and proposal at the same time – in essence making a “demand” for a concession. A state is also

coded in this category if there is no evidence to lead it to fall in the 3, 2, or 0 categories.

Coding issue linkage structure

The measure of the difference in issue salience is based on the finding in the formal issue linkage literature that the linkage of issues that are more differently valued creates a larger zone of agreement.³ This measure is therefore a proxy that measures the average zone of agreement across each pair of states on each issue in a given negotiation. The larger is the average zone of agreement, the more differently valued are the issues in that negotiation, all else constant.

This measure was calculated by coding (1) the distance between all pairs of states' bargaining positions, and (2) the distance between each state's bargaining position and reservation point (the point farthest from its bargaining position at which each state would be willing to accept an agreement). That information was then used to determine the size of the policy space within which any two states would be willing to accept an agreement – the “zone of agreement” for those two states on that issue. The individual zone of agreement among each pair of states on each issue in the negotiation was then averaged across all issue-pairs to proxy the zone of agreement created by a given set of linked issues.⁴

The benefit of this measure is that it is *comparable* across negotiations involving different sets of issues (and different numbers of issues). Because it is a measure that provides a one-dimensional proxy of the overall zone of agreement for any given negotiation, it helps to overcome a problem created by trying to directly measure and compare the actual zone of agreement created in each negotiation. While this latter measure is potentially a more accurate measure of the issue linkage structure, it is not comparable across negotiations with different numbers of issues, because the dimensionality of the zone of agreement varies depending on the number of issues being negotiated. For example, the zone of agreement in a negotiation with three issues is a three-dimensional object, while the zone of agreement in a negotiation with two issues is a two-dimensional object. A three-dimensional object consists of an infinite set of different possible two-dimensional objects, and they therefore cannot be directly compared.⁵

³ Tollison and Willett 1979; Sebenius 1983.

⁴ This coding process follows that of McKibben 2013.

⁵ To more intuitively illustrate this idea, think of a pen – a three-dimensional object. If we slice the pen vertically, the two-dimensional plane that we derive to compare to another

Step 1: code states' bargaining positions

The first step is to determine the bargaining position of each state on each of the main issues in the negotiation. Drawing on the information gathered from various empirical sources (as described below), states' bargaining positions on each issue were plotted in one-dimensional policy space. To simplify the analysis, each state was plotted at either one extreme or the other of the policy space under consideration. The variation in the degree to which each state's actual interests were associated with that most extreme preference is then captured in the "flexibility" of their position, which is measured in step 2.⁶

Step 2: code "flexibility" in states' positions

The second step is to determine the "flexibility" that exists in each state's position on each issue. Formally, this captures the distance between a state's bargaining position and reservation point on a given issue. Substantively, it reflects a state's willingness to accept outcomes that deviate from its position on an issue. As described below, very different types of data can be used to empirically get at this concept. Because of the lack of precision in translating answers to these types of question into a concrete measure, a set of categories was created to code a state's "flexibility" on each issue. A state was coded with a *very small* degree of flexibility on an

two-dimensional object is (basically) a small circle defined by diameter equal to the diameter of the pen (maybe about $\frac{1}{4}$ inch). This two-dimensional plane is clearly part of the three-dimensional pen. However, a very different two-dimensional object can also be derived from the same pen if it is sliced horizontally. This creates a long, thin, two-dimensional rectangle with a width equal to the diameter of the pen ($\frac{1}{4}$ in.) and length equal to the full length of the pen (about 4 in). Which of these different two-dimensional objects (or any of the other infinite set of possible two-dimensional planes that can be sliced from the pen) is the one that we should compare to our other two-dimensional object? The choice is completely subjective, making such a comparison meaningless in terms of creating an objective and comparable measure.

⁶ Some other analyses use this basic measurement process to plot states' positions throughout the policy space (e.g., [McKibben 2013](#)). When one has detailed interview evidence as a data source, this is fairly easy to do. However, when negotiating documents and statements made in the negotiations themselves are the only information available, states' positions and flexibility have to somehow be separated in the empirical measurement process. Basic information about a state's interests was therefore used to code its position, and then more detailed information about its stated preferences was used to code its flexibility – allowing this measure to be relatively comparable across the negotiations stemming from different data sources. This data in this book therefore includes a re-coding of the EU data from [McKibben \(2013\)](#) to fit this more simplified measurement process, allowing it to be comparable to the GATT and climate change data gathered.

issue if achieving its stated goals on that specific issue was “very important” compared to the other issues in the negotiation. Its flexibility was coded as *small* if winning on that issue was simply “important.” A state was coded with *large flexibility* on an issue if winning on that issue was “not that important” to the state in the overall negotiation. In the most extreme cases, a state’s flexibility was coded as *very large* if an issue was not at all important to its interests relative to the other issues in the negotiation. Finally, if the importance a state placed on an issue falls between these two sets of categories, a state was coded with a *medium* degree of flexibility on that issue. Across the empirical chapters, these factors were coded based on different types of empirical evidence, though each source (and thus precise coding process) remains constant in the specific context considered in each chapter.

Before continuing, it is important to note that a state’s flexibility in its bargaining position, *might* or *might not* translate into actual concession offers. A state could be very flexible on an issue, but then for some reason does not have to offer concessions on that issue to achieve an agreement. Conversely, a state might be highly inflexible in its position on an issue, but might still be forced to offer concessions against its interests, because of the use of coercive tactics by the other side. The measurement steps here are designed to capture states’ interests across a given set of issues being negotiated, *not* the actual negotiating behavior that they adopted. Actual concessions that are offered therefore should not (and *are not*) used in the coding of this aspect of the measure. This is particularly important to ensure that this measure does not overlap with the dependent variable in Chapters 5 and 6, which captures state bargaining behavior.

Measuring positions and flexibility in practice

Depending on the nature of the empirical evidence available for each analysis, different procedures were used to identify and code each of these factors. The overall measure that results, however, is the same.

Coding using interview evidence. When interview evidence was available for the analysis of a given negotiation, and working documents were limited in availability (as is the case for the analyses in the EU chapter), the issue linkage structure was coded based on direct interview evidence, corroborated with footnoted working documents when possible. The *relevant issues in each bargaining phase* were identified through questions

posed to state representatives involved in each negotiation, which asked what the main issues were that had to be discussed at the political level.⁷ The opposing positions that were taken on that issue were also assessed, in order to define the policy space for each issue. Any issue mentioned by the state representatives was included in the analysis.

States' positions were coded based on elite interviews with state representatives, asking questions such as, "What were [your state's] goals in this negotiation?" Where possible, interviews were conducted with multiple state representatives to ensure accuracy of the answers, and representatives were re-interviewed across multiple years. These claims about positions were corroborated by examining the footnoted working documents which indicated state positions on each issue in the proposal for agreement.

States' flexibility in their bargaining positions was also coded using interview evidence. Negotiators were asked how important winning on each individual issue was to their state's overall interests in a specific negotiation – that is, how important winning on that issue was *relative to* the other issues at stake. Two factors were used to identify states' flexibility on each issue. Toward the beginning of the discussion regarding the negotiation of each dossier, representatives were asked what the most important issues in the negotiation were for their state. When a particular issue was identified as "most important" for a state by any of the state's representatives who were interviewed, that state's flexibility on that issue was coded as "small." When that state was very extreme in its position, expressing a complete unwillingness to move from its position on that issue, its flexibility was coded as "very small." Negotiators were later asked directly about the importance of each of the remaining issues. If an issue was described as important (but the interviewee had not identified it as one of the most important ones to her state's interests without being prompted), the state's flexibility on that issue was coded as "medium." Finally, for the issues on which the representative expressed a willingness to "give" in order to win on other issues, the state was coded as having "large" flexibility. If a state's representative expressed complete indifference on an issue, or expressed a (potential) willingness to accept the opposing states' position on a particular issue, that state's flexibility was coded as "very large." Where discrepancies existed between the claims of

⁷ The "political level" refers to an issue being sent above the level of technical working groups for negotiation and decision.

different member state representatives, the report of the representative who was interviewed at the highest political level was used.

Coding using document review. Given that state representatives involved in the Uruguay Round could not be interviewed for the GATT study, but that negotiating documents *were* readily available, states' positions and flexibility were coded using the detailed information laid out in each of the summary documents and state communiqués circulated during the Uruguay Round of GATT negotiations. To identify the *relevant issues in each negotiating group*, the GATT Secretariat's summary documents, which explicitly identify each of the key issues in each working group of the Uruguay Round, were used.

States' positions were coded based on general expectation of likely positions they would have, based on their coalition membership – falling on either one side or the other on a given issue. While this might not be perfectly accurate in every case, it is extremely important to code states' positions in this way, so that the coding was in no way tied to the official statements made by states, which were used to code the degree of *flexibility* they likely had in their position. Overall, it is of central importance not to conflate states' positions and flexibility in any way when coding this measure. They are *separate* concepts, and need to be identified in empirically separate ways.

The *flexibility states have in their position* was then coded based on official state communiqués, as well as economic data regarding the issue of interest. A state was coded with “small” flexibility on an issue if it made a formal statement in support of its position, and “very large” flexibility if it made a formal statement in support of the opposing position. If a state made no formal statement in one of its communiqués regarding a particular issue, it was coded with either “medium” or “large” flexibility on the issue. In which of these two categories a state fell depends on data relevant to the substantive issue at stake.

Coding using webcasts of actual negotiations. When videos of the actual meetings were available, the information gleaned from observing them was used to code states' positions and flexibility on the issues being discussed. The *position* of each state on each issue was assigned based on their membership in various coalitions. In the context of the climate change negotiations, these positions almost always fell in the developed versus developing state categories. States' *flexibility* in those positions was then calculated. Drawing on the webcast of the actual negotiations, a

state's flexibility was coded based on the statements made by its representatives. If no statement was made either way on a particular issue, a state was coded with a "medium" degree of flexibility on that issue. If a state was in a coalition whose chair made a statement on that issue defending their position on an issue, that state was coded with a "small" degree of flexibility. If the chair of a state's coalition made a statement in support of the opposing position, that state was coded with a "large" degree of flexibility. Finally, if a state's own representative took the floor on its behalf, and made a statement defending her state's position on an issue, that state was coded with "very small" flexibility. Similarly, if her statement was made in support of the opposing position, that state was coded with a "very large" degree of flexibility on that issue.

Step 3: calculate the zone of agreement for each issue-pair

Based on these coding processes, the zone of agreement for each pair of states on each issue was calculated by adding together the "flexibility" of both states and subtracting the distance between their bargaining positions. What is left is a measure of the distance in the policy space within which both states would be willing to accept an agreement on that issue.⁸

To carry out this calculation, numerical values were first assigned to the categorical measures of the distance between states' bargaining positions and each state's "flexibility." For simplicity, the bargaining space on each issue was normalized to the [0,1] interval, and states' positions were coded at one extreme or the other. Their flexibility was then coded as very small = 0, small = .25, medium = .5, large = .75, and very large = 1.

Other numerical assignments are possible, of course. The result will be a different overall "scale," but changes in the scale can be interpreted in the same way (as long as the ordinal ranking between the categories is preserved). The difference would be like the difference between Celsius and Fahrenheit in measures of temperature. The actual values might differ, but larger values of both indicate a hotter temperature. The same will be true for the measure here – larger values indicate a larger zone of agreement, and thus more differently valued issues.

⁸ For the special cases in which this calculation of the zone of agreement is greater than the bargaining space that exists between the two states' bargaining positions, the value was coded to reflect only the distance between the states' bargaining positions.

Step 4: aggregate to characterize the overall negotiation

Using these values and the coding rules laid out above, a value to represent the size of the zone of agreement for each pair of states on each issue was calculated. The coding rule that was proposed to measure the differently valued nature of the issue linkage structure is the average of the zones of agreement created by the linkage of a given set of issues across all pairs of states on all issues. Larger values indicate that a larger zone of agreement was produced, and thus the issues linked in the negotiation were more differently valued by the negotiating states, all else constant.

Coding the BATNA

The second important feature of the bargaining structure is the BATNA of each state. This is a factor for which a rigorous, systematic measure did not exist for a long time.⁹ McKibben provided a way to measure it, however, and that coding process is drawn on here.¹⁰

To measure this concept, it should be recognized that the better a state's BATNA, the less "need" that state has for reaching an agreement. For Chapters 5 and 6, a state's BATNA was coded as a four-category variable, labeled BENEFICIAL BATNA, which captures whether or not reaching an agreement, in and of itself, was likely to be "very important" (coded 0), "important" (coded 1), "somewhat important" (coded 2), or "unimportant" (coded 3) for each individual state in each negotiation.

Coding for EU negotiations. Following the coding process laid out by McKibben in her analysis of EU bargaining, and drawing on interview evidence with state negotiators, a state's "need for agreement" was coded by asking interviewees directly about the importance of the negotiation to their interests. Specifically, negotiators were asked the degree to which their state placed importance on "reaching an agreement, in and of itself" in each bargaining interaction. Their answers were coded into the four categories described above, capturing whether or not reaching an agreement in a particular bargaining interaction was "very important" (coded 0), "important" (coded 1), "somewhat important" (coded 2), or "unimportant" (coded 3) for any given state.

⁹ Odell 2002.

¹⁰ McKibben 2013.

To avoid problems of endogeneity (conflating bargaining behavior that was adopted, *ex post*, with their *ex ante* interests), these questions were asked, whenever possible, in interviews conducted *before* an agreement was actually reached. This was done to lessen interviewees' incentive to misrepresent the importance of agreement to make up for significant concessions that might have been made by their state (or vice versa). About half of the interviews that were conducted for this study took place before the negotiations being analyzed were completed, allowing for many state representatives to be interviewed in this way.

Larger values of the resulting measure indicate that achieving an agreement, in and of itself, was less important to the interests of a given state, and thus that it likely faced a more beneficial BATNA than did states that placed greater value on reaching an agreement, all else constant.

Coding for trade negotiations. When interviews could not be conducted, as in the case of the analysis of international trade negotiations, a state's BATNA was coded based on whether its domestic producers would likely benefit from a new trade agreement in the particular issue area under consideration in a given negotiation. This was coded based on national-level data of imports and exports of various commodities for the beginning year of each negotiation. The specific data and coding procedure that was used is described, in detail, below.¹¹

In the context of the multilateral trade negotiations, the goal of an agreement was to break down barriers to the free flow of trade in a particular sector. States that were likely to be most disadvantaged if an agreement was not reached (and the status quo thus remained) were states whose economies were highly dependent on the export of goods in that particular sector. It is also important to note that the bargaining power that stems from the beneficial/costly nature of the BATNA is relative – that is, it matters whether or not a state's BATNA is better or worse than that of its bargaining opponents. The beneficial/costly nature of the BATNA is therefore coded based on the *importance of exports in that sector* to a state's overall economy *relative to* the importance of exports in

¹¹ Note that more refined trade data is broken out into a categorical measure in this coding process. This was done because, for some of the negotiating groups, such data was not available, and categories were therefore necessary. To keep the measure consistent across all GATT negotiating groups, categories therefore had to be used, even when more refined data was available.

that sector to the economies of the other GATT member states. For the most controversial and important issues in these negotiations, the full range of BATNA values was used. For those that were less important, the BATNA was only coded based on the middle categories.

For the market access negotiations, which were focused on breaking down barriers to free trade in the economic sector of interest, the beneficial nature of the status quo alternative to agreement for a state was coded based on the “importance” of exports the products being negotiated had to each state’s economy (defined both in terms of (1) net exports as a percentage of its GDP, and (2) net exports as a percentage of its total exports).¹² A state is therefore coded as having a *very beneficial* BATNA in a given negotiating group (i.e., BENEFICIAL BATNA was coded 3) if its exports in that sector fell less than one standard deviation below the average across all GATT member states on at least one of the two measures (net exports as a percentage of GDP, or net exports as a percentage of total exports). Similarly, a state was coded as having a *very costly* BATNA (i.e., BENEFICIAL BATNA was coded 0) if its exports in that sector were more than one standard deviation above the average on at least one of the two measures. If neither of these two conditions holds, the beneficial nature of its BATNA was coded 1 if both indicators of the importance of the sector were above average, and 2 otherwise.

The coding of states’ BATNAs for the following market access groups follows this pattern. For the agricultural negotiating group, a state’s BATNA is coded in this way based on its net exports of agricultural products. States’ BATNAs for the services negotiating group were coded in this way based on their services exports. BATNAs in the textiles and clothing negotiating group were coded in this way using states’ textile and clothing exports. In addition, states’ BATNAs for trade-related aspects of intellectual property rights follow this pattern, drawing on trademark registrations and patents granted. States’ BATNAs in the TRIMs negotiating group also follow this pattern, using net outflows of foreign direct investment. Finally, states’ BATNAs for the tariff negotiations were coded in this same way based on industrial exports, but on a scale from 0 to 2 because it was a less controversial negotiation. A BATNA of 0 for the tariff negotiations indicates net exports greater than one standard deviation above the average either as a percentage of GDP or as a percentage of total exports. A BATNA of 2 indicates fewer net

¹² The data that was used comes from the first year in which the negotiation took place.

exports than the average on either measure. Otherwise, a state's BATNA is coded 1.

The BATNAs for natural resource-based products were coded somewhat differently, because they cover multiple products categorized as separate commodities which must be aggregated to determine the exports of the overall category. However, they still focus on the overall importance of the export of these products to a state's economy. For natural resource-based products, the GATT Secretariat circulated summary documents of states' trade in these various issue areas. A state was coded with a BATNA of 0 if it was labeled as a "major" exporter of one of these products (but was not labeled as a "major importer" of any of them). It was coded with a BATNA of 2 if it was listed solely listed as a "major importer" of these products. Finally, a state was coded with a BATNA of 1 if it was listed as a major exporter of one type of natural resource-based product but a major importer of another. It was also coded with a BATNA of 1 if it did not fall in any of these categories. The documents used to code the natural resource-based products were MTN.GNG/NG3/W/18 for analyses of trade in nonferrous minerals and MTN.GNG/NG3/W/15 for trade in wood and wood products. Analyses of trade in fisheries were based on WTO trade data.

For tropical products, the GATT Secretariat again circulated documents analyzing trade in the various types of tropical products. A state was coded with a BATNA of 3 if the Secretariat listed it as a market that had not granted bound, duty-free treatment on an MFN basis in at least one of the seven major tropical product issue areas. If a state was listed by the GATT Secretariat as a market that is a "major supplier" of more than two of the seven major tropical products (and is not a non-MFN importer), it was coded with a BATNA of 0. If a state was listed as a major supplier of only one or two of these products, it was coded with a BATNA of 1. Otherwise, the state was coded with a BATNA of 2. GATT document MTN.GNG/NG6/W/4/Add.2 was used to analyze trade in jute and hard fibres; MTN.GNG/NG6/W/11/Add.2 was used to analyze trade in certain oilseeds, vegetable oils, and oilcakes; MTN.GNG/NG6/W/15/Add.2 was used to analyze trade in natural rubber and tropical wood; MTN.GNG/NG6/W/7/Add.2/Rev.1 was used to analyze trade in spices, flowers, and plaiting products; MTN.GNG/NG6/W/2/Add.2/Rev.1 was used to analyze trade in coffee, tea, and cocoa; MTN.GNG/NG6/W/19/Add.2 was used to analyze trade in tropical fruits and nuts; and MTN.GNG/NG6/W/12/Add.2 was used to analyze trade in tropical roots, rice, and tobacco.

The non-market access negotiations had to be coded in a different way. These last negotiating groups were coded based on state activity in the various issue areas covered. For the dispute settlement negotiating group, a state's BATNA was coded based on its current status in GATT disputes. If it had been a complainant in fewer disputes than it had been a defendant, the dispute settlement system tended to be used against it. The beneficial nature of its BATNA was therefore coded 0. If it had been a complainant at least as many times as it had been a defendant, the dispute settlement system tended to be used by that state to try to further its interests. The beneficial nature of its BATNA was therefore coded 2. States that had never been involved in a dispute were coded with a BATNA of 1.

For the GATT Articles negotiating group, one of the central issues dealt with balance-of-payments issues – a key issue because the selling of exports affects a state's ability to pay off its international debt, which had been accumulated during the financial crisis in the 1980s. Data on a state's level of international debt was therefore used to measure the nature of its BATNA. If a state's level of international debt was greater than one standard deviation above the average level of debt, it was coded with a BATNA of 0. If its level of international debt was below average, it was coded with a BATNA of 2. Otherwise, it was coded with a BATNA of 1.

For the safeguards negotiating group, the main issue being discussed had to do with the use of grey area measures such as voluntary export restraints (VERs). Data on states' use of these grey area measures was therefore used to code its BATNA in these negotiations. A state that had required VERs was coded with a BATNA of 2; a state that had VERs imposed on it was coded with a BATNA of 0. Otherwise, a state was coded with a BATNA of 1. The data for this measure comes from an analysis conducted by the GATT Secretariat regarding the use of safeguards. This document is MTN.GNG/NG9/W/2/Rev.1.

For the non-tariff barrier (NTB) negotiating group, a state's use of NTBs is used to code the value of its BATNA – its status quo situation absent an agreement breaking down these barriers. A state was coded with a BATNA of 2 if more requests were made of it to lower NTBs than it made to other states, as this indicates that a state is a major user of NTBs but not one that is significantly affected by them. Conversely, a state was coded with a BATNA of 0 if it made more requests to have NTBs lowered by other states than there were requests made of it to do so. If a state made no such requests and received no such requests, it was coded with a BATNA of 1.

For the MTN Agreements negotiating group, the issues involved were the Tokyo codes. A state was coded with a BATNA of 2 if it signed all the codes from the Tokyo Round, indicating that these codes were all largely acceptable to that state. If a state did not sign all the codes (indicating that at least one was not compatible with its interests), it was coded with a BATNA of 1.

Finally, for the subsidies negotiating group, developed states currently utilizing export subsidies were in a favorable position, as their export subsidies were protected under the current system. These states are therefore coded with a beneficial BATNA of 2. Two categories of state were coded with a BATNA of 0. These were (1) developing states which signed and/or acceded to the Tokyo Subsidies Code, and were therefore in a vulnerable position to have countervailing measures invoked against them, and (2) developed and developing states that objected to the use of agricultural export subsidies because their significant agricultural exports were in a vulnerable status quo position on at least one of the two key subsidy issues. These states are therefore coded with a beneficial BATNA of 0. The remaining developed and developing states were coded with a beneficial BATNA of 1.

Coding for climate change negotiations. Because more nuanced data was available in the climate change context, states' BATNAs were coded using a continuous measure. In the climate change context, the costliness of a state's BATNA is characterized by its ability to deal with the adverse effects of unregulated greenhouse gas emissions and the resulting climate change effects *absent a negotiated agreement* – that is, on its own.

The costliness of each state's BATNA was therefore coded based on two factors. The first factor comes from the Environmental Vulnerability Index (EVI). This index provides indicators of each state's vulnerability to climate change. The coding of this variable averages a state's vulnerability across all of these factors, creating a single indicator of a state's vulnerability to climate change.¹³ This EVI measure is then weighted by a state's GDP per capita, capturing its wealth, and thus its ability to deal with any environmental problems it faces. The resulting measure therefore captures (1) a state's environmental vulnerability to climate change, and (2) its ability to deal with those climate change problems unilaterally, making

¹³ The list of the factors related to climate change and climate change desertification that the EVI uses can be found on the website of Secretariat of the Pacific Community's Applied Geoscience and Technology Division: www.sopac.org/index.php/environmental-vulnerability-index.

it less dependent on an agreement for help.¹⁴ States with the most costly BATNA face significant environmental impacts from climate change and have few resources to deal with those problems. States with the least costly BATNA face few adverse effects from climate change and have significant resources to deal with any problems they do face. The resulting variable is labeled COSTLY BATNA.

Note that in these climate change negotiations the BATNA measure is inverted, capturing the degree to which a state faced a more *costly* BATNA. The reason for the inversion of the measure in this chapter is that having a *more costly* BATNA makes a state *more likely* to adopt a rule-changing strategy (the dependent variable of interest in this chapter). Similarly, having greater material power also makes a state *more likely* to adopt a rule-changing strategy. The interaction of these two variables can therefore be directly interpreted when both variables are expected to exert effects in the same direction.

Measuring states' relative v. absolute gains focus

The variable RELATIVE GAINS is a dichotomous variable coded based on two key arguments in the literature regarding what causes states to focus on relative or absolute gains. In particular, Powell and Keohane highlight the fact that negotiations in which gains by one's partner today could be used to harm oneself in a future period will lead to a concern for relative gains.¹⁵ This can occur in both "high" and "low" politics issue areas. In particular, in low politics, economic issue areas, if gains by your bargaining partner today could push you out of the market tomorrow,¹⁶ relative gains are likely to be a concern. In addition, several scholars highlight the fact that negotiations focused on security or sovereignty issues for the negotiating states will push states away from a focus on absolute gains.¹⁷ Building on these two arguments, the RELATIVE GAINS variable is a dichotomous measure where 1 indicates that states placed importance on the relative gains associated with an agreement and 0 indicates

¹⁴ Indeed, one of the key issues in these climate change negotiations was one of "adaptation" – providing funding to vulnerable states who are not equipped to deal with climate change to help them do so. The need for these adaptation funds is therefore a central component of a state's need for agreement. The GDP per capita part of the measure captures this.

¹⁵ Powell 1991; Keohane 1993.

¹⁶ Powell 1991; Keohane 1993.

¹⁷ Waltz 1979; Lipson 1984; Mearsheimer 1994/1995.

that states placed importance on the absolute gains associated with the agreement.

Negotiations that affect the future bargaining power of states because they alter the status quo alternative for those future negotiations are therefore coded with a value of 1. Similarly, negotiations that directly impact state sovereignty or security were coded 1. This category captures negotiations likely characterized by a concern for relative gains. All other negotiations were coded with a value of 0, indicating that negotiations likely were *not* characterized by a concern for relative gains (i.e., that states were focused on absolute gains in that negotiation).

The logic underpinning the coding choices for this variable is described, in detail, in the text itself, and therefore does not need to be repeated here.

Summary

The measures described above are the key variables included in the empirical analyses laid out in Part II of the book. Before concluding, it is important to note that while the resulting measures are internally consistent across the multiple negotiations included in each chapter, they are not necessarily directly comparable across the different chapters. This is due to the very different data sources used to code these various measures. While each of the coding methods proposed above gets at the idea of the issue linkage structure, states' BATNAs, and so on, they each do so in empirically different ways. Each therefore represents a different way to operationalize these concepts, but those different operationalizations are not necessarily perfectly equivalent. The measures are therefore *internally* consistent within each of the individual datasets, but are not necessarily able to be aggregated *across* those different bargaining contexts.



References

- Akanle, Tomilola, Asheline Appleton, Kati Kulovesi, Anna Schulz, Matthew Sommerville, Chris Spence, and Yulia Yamineva. 2009a. "Earth Negotiation Bulletin, COP15 #3." Vol. 12 No. 450. International Institute for Sustainable Development. 9 December 2009.
- 2009b. "Earth Negotiation Bulletin, COP15 #4." Vol. 12 No. 451. International Institute for Sustainable Development. 10 December 2009.
- 2009c. "Earth Negotiation Bulletin, COP15 #7." Vol. 12 No. 454. International Institute for Sustainable Development. 14 December 2009.
- 2009d. "Earth Negotiation Bulletin, COP15 #9." Vol. 12 No. 456. International Institute for Sustainable Development. 16 December 2009.
- 2009e. "Earth Negotiation Bulletin, COP15 #11." Vol. 12 No. 458. International Institute for Sustainable Development. 18 December 2009.
- 2009f. "Earth Negotiation Bulletin, COP15 Final." Vol. 12 No. 459. International Institute for Sustainable Development. 22 December 2009.
- Allee, Todd, and Paul Huth. 2006. "When Are Governments Able to Reach Negotiated Settlement Agreements?" In *Approaches, Levels, and Methods of Analysis in International Politics*. Harvey Starr (ed.). New York: Palgrave, pp. 13–32.
- Axelrod, Robert. 1984. *The Evolution of Cooperation*. New York: Basic Books.
- Axelrod, Robert, and Robert O. Keohane. 1985. "Achieving Cooperation under Anarchy: Strategies and Institutions." *World Politics* 38(1): 226–54.
- B92. 2008. "UNMIK, EULEX Sign Memorandum." 18 August 2008. [www.b92.net/eng/news/politics-article.php?mm=8dd=18yyyy=2008].
- Baker, Peter. 2009. "White House Scraps Bush's Approach to Missile Shield." *New York Times*. 17 September 2009.
2010. "Twists and Turns on Way to Arms Pact with Russia." *New York Times*. 27 March 2010: p.A4.
- Baker, Peter, and Mark Landler. 2010. "Delay on Arms Pact Slows Reset of US–Russia Ties." *New York Times*. 10 March 2010: p.A6.
- Baldwin, David A. 1993. "Neoliberalism, Neorealism, and World Politics." In *Neorealism and Neoliberalism: The Contemporary Debate*. David A. Baldwin (ed.). New York: Columbia University Press.
1999. "Force, Fungibility, and Influence." *Security Studies* 8(4): 173–83.

- Barach, Samuel B., and Edward J. Lawler. 1986. "Power Dependence and Power Paradoxes in Bargaining." *Negotiation Journal* 2(2): 167–74.
- Barnett, Michael. 1996. "Sovereignty, Nationalism, and Regional Order in the Arab States System." In *State Sovereignty as Social Construct*, Thomas J. Biersteker and Cynthia Weber (eds.). Cambridge University Press.
- Barnett, Michael, and Raymond Duvall. 2005. "Power in Global Governance." In *Power in Global Governance*, Michael Barnett and Raymond Duvall (eds.). Cambridge University Press. pp. 1–32.
- Barton, John H., Judith L. Goldstein, Timothy E. Josling, and Richard H. Steinberg. 2006. *The Evolution of the Trade Regime: Politics, Law, and Economics of the GATT and the WTO*. Princeton University Press.
- Bates, Robert H. 1988. "Contra Contractarianism: Some Reflections on the New Institutionalism." *Politics and Society* 16(2–3): 387–401.
- BBC News. 2006. "UN Frustrated by Kosovo Deadlock." *BBC News*. 9 October 2006.
- BBC Worldwide Monitoring. 2007. "North Korean Officials Arrive in China for Talks on US Sanctions." *BBC Monitoring, Asia-Pacific – Political*. 30 January 2007.
- Bearce, David H., Katharine M. Floros, and Heather Elko McKibben. 2009. "The Shadow of the Future and Bargaining Cooperation in the Context of a Three-Phase International Cooperation Problem." *Journal of Politics* 71(2): 719–32.
- Becker, Elizabeth. 2003. "Nations Fail to Agree on Farm Subsidies." *New York Times*. 1 April 2003.
2004. "Farm Subsidies Again Take Front Seat at the WTO" *New York Times*. 28 July 2004.
- Berton, Peter, Hiroshi Kimura, and I. William Zartman (eds.). 1999. *International Negotiation: Actors, Structure/Process, Values*. New York: St. Martin's Press.
- Bhagwati, Jagdish, and Mathias Hirsch (eds.). 1998. *The Uruguay Round and Beyond: Essays in Honor of Arthur Dunkel*. Ann Arbor: University of Michigan Press.
- Bilefsky, Dan. 2007. "After 8 Years in Limbo, Frustrated Kosovo Awaits Its Future." *New York Times*. 11 December 2007.
- 2008a. "Gates, in Kosovo, Highlights US Balancing Act on Russia." *New York Times*. 8 October 2008.
- 2008b. "Serbs Continue to Push for Control of Northern Kosovo." *New York Times*. 21 February 2008.
- Bilefsky, Dan, and Nicholas Wood. 2007. "Talks on Kosovo Hit a Dead End, Rice Says." *New York Times*. 6 December 2007.
- Blaydes, Lisa. 2004. "Rewarding Impatience: A Bargaining and Enforcement Model of OPEC." *International Organization* 58(2): 213–37.
- Braumoeller, Bear F. 2013. *The Great Powers and the International System: Systemic Theory in Empirical Perspective*. Cambridge University Press.

- Bräuninger, Thomas, Tanja Cornelius, Thomas König, and Thomas Schuster. 2001. "The Dynamics of European Integration: A Constitutional Analysis of the Amsterdam Treaty." In *The Rules of Integration: Institutional Approaches to the Study of Europe*. Gerald Schneider and Mark Apsinwall (eds.). Manchester: Manchester University Press, pp. 46–68.
- Breen, John M. 1993. "Agriculture." In *The GATT Uruguay Round: A Negotiating History. Volume I: Commentary*. Terence P. Stewart (ed.). Boston, MA: Kluwer Law and Taxation Publishers, pp. 125–254.
- Breslin, J. William, and Jeffrey Z. Rubin (eds). 1991. *Negotiation Theory and Practice*. Cambridge, MA: The Program on Negotiation at Harvard Law School.
- Calabresi, Massimo. 2008. "US and Iran: A One-Sided Negotiation" *Time Magazine*. 21 July 2008.
- Carpenter, Jeffrey P. 2003. "Bargaining Outcomes as the Result of Coordinated Expectations: An Experimental Study Of Sequential Bargaining." *Journal of Conflict Resolution* 47(2): 119–39.
- Carrubba, Clifford J. 1997. "Net Financial Transfers in the European Union: Who Gets What and Why?" *Journal of Politics* 59(2): 469–96.
- Choe, Sang-Hun. 2009. "North Korea Perfects Its Diplomatic Game: Brinkmanship." *New York Times*. 3 April 2009: p. A13.
- Conceição-Heldt, Eugénia. 2006. "Integrative and Distributive Bargaining Situations in the European Union: What Difference Does It Make?" *Negotiation Journal* 22(2): 145–65.
2008. "Assessing the Impact of Issue Linkage in the Common Fisheries Policy." *International Negotiation* 13(2): 285–300.
- Cooper, Helene, C. J. Chivers, and Clifford J. Levy. 2008. "US Watched as a Squabble Turned Into a Showdown." *New York Times*. 18 August 2008.
- David, Paul A. 1994. "Why Are Institutions 'Carriers of History'? Path Dependence and the Evolution of Conventions, Organizations, and Institutions." *Structural Change and Economic Dynamics* 5(2): 205–20.
- Davis, Christina L. 2004. "International Institutions and Issue Linkage: Building Support for Agricultural Trade Liberalization." *American Political Science Review* 98(1): 153–69.
- Dempsey, Judy. 2007. "Diplomats to Increase Pressure on Serbia to Accept Kosovo Plan." *New York Times*. 18 April 2007.
- Devereaux, Charan, Robert Z. Lawrence, and Michael D. Watkins. 2006. *Case Studies in US Trade Negotiation. Vol. 1: Making the Rules*. Washington, DC: Institute for International Economics.
- Dinar, Shlomi. 2006. "Assessing Side-payment and Cost-sharing Patterns in International Water Agreements: The Geographic and Economic Connection." *Political Geography* 25(4): 412–37.
- Domke, W. 1988. *War and the Changing Global System*. New Haven: Yale University Press.

- Dougherty, Carter. 2007. "Once Again, Trade Effort Stumbles on Subsidies." *New York Times*. 22 June 2007.
- Duffield, John. 2003. "The Limits of 'Rational Design.'" *International Organization* 57(2): 411–30.
2007. "What are International Institutions?" *International Studies Review* 9: 122.
- Dür, Andreas, and Gemma Mateo. 2010a. "The Choice of Bargaining Tactics in the European Union: Power, Preferences, and Culture." *Journal of European Public Policy* 17(5): 680–93.
- 2010b. "Hard and Soft Bargaining in the EU: Negotiating the Financial Perspective, 2007–2013." *Journal of Common Market Studies* 48(3): 557–78.
- Economist*. 2006. "Serbia and Kosovo: A Province Prepares to Depart." *The Economist*. 2 November 2006.
2007. "Kosovan Independence." 1 June 2007.
2008. "Kosovo and Serbia: Deployment Days." 30 December 2006.
- 2011a. "Serbia and the EU: Brussels Beckons." 28 October 2010.
- 2011b. "The Balkans and Europe: The Pull of Brussels." 10 October 2011.
- Elgström, Ole, and Christer Jönsson. 2000. "Negotiation in the European Union: Bargaining or Problem-Solving?" *Journal of European Public Policy* 7(5): 684–704.
- Elkhamlichi, Samira: Carbon Finance Assistant, World Bank. 2009. "Regional Distribution of CDM Projects." Presentation at UNFCCC Conference, Bonn. Published at http://unfccc2.meta-fusion.com/kongresse/090601_SB30_Bonn/download/090609_Elkhamlichi.pdf.
- Environmental Protection Agency of the United States. 2011. "US–Mexico Border." www.epa.gov/SoCal/border.html [updated 13 July 2011, accessed 30 October 2011].
- Faure, Guy-Olivier. 2002. "International Negotiation: The Cultural Dimension." In *International Negotiation: Analysis, Approaches, Issues*. 2nd edn. Victor A. Kremenyuk (ed.). San Francisco: Jossey-Bass, pp. 392–415.
- Fearon, James D. 1995. "Rationalist Explanations for War." *International Organization* 49(3): 379–414.
1997. "Signaling Foreign Policy Interests: Tying Hands Versus Sinking Costs." *Journal of Conflict Resolution* 41(1): 68–90.
1998. "Bargaining, Enforcement, and International Cooperation." *International Organization* 52(2): 269–305.
- Finger, J. Michael, Ulrich Reincke, and Adriana Castro. 1999. "Market Access Bargaining in the Uruguay Round: Rigid or Relaxed Reciprocity?" World Bank Paper No. 2258.
- Finnemore, Martha, and Kathryn Sikkink. 1998. "International Norm Dynamics and Political Change." *International Organization* 52(4): 887–917.
- Fisher, Roger, and Wayne H. Davis. 1987. "Six Basic Interpersonal Skills for a Negotiator's Repertoire." *Negotiation Journal* 3(2): 117–22.

- Fisher, Roger, and William Ury. 1981. *Getting to Yes: Negotiating Agreement without Giving In*. 2nd edn. Boston: Houghton Mifflin.
- Frieden, Jeffrey A. 2001. "Making Commitments: France and Italy in the European Monetary System, 1979–1985." In *The Political Economy of European Monetary Unification*. 2nd edn. B. Eichengreen and J. A. Frieden (eds.). Boulder: Westview Press, pp. 23–47.
- Garrett, Geoffrey. 1992. "International Cooperation and Institutional Choice: The European Community's Internal Market." *International Organization* 46(2): 533–60.
- Garrett, Geoffrey, and Barry R. Weingast. 1993. "Ideas, Interests, and Institutions: Constructing the European Community's Internal Market." In *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*. Judith Goldstein and Robert O. Keohane (eds.). Ithaca: Cornell University Press, pp. 173–206.
- Gelman, Andrew, and Jennifer Hill. 2007. *Data Analysis Using Regression and Multilevel/Hierarchical Models*. Cambridge University Press.
- Ghosn, Faten. 2010. "Getting to the Table and Getting to Yes: An Analysis of International Negotiations." *International Studies Quarterly* 54(4): 1055–72.
- Goldenberg, Suzanne. 2010. "US Denies Climate Aid to Countries Opposing Copenhagen Accord." *Guardian*. 9 April 2010.
- Gomart, Thomas. 2008. *EU–Russia Relations: Toward a Way Out of Depression*. Washington, DC: Center for Strategic and International Studies.
- Graham, Thomas. 2008. *US–Russia Relations: Facing Reality Pragmatically*. Washington, DC: Center for Strategic and International Studies.
- Greenpeace International. 2008. "Carbon Dioxide Capture and Storage in Geological Formations as Clean Development Mechanism Project Activities," Submission on FCCC/SBSTA/2007/L.19. <http://unfccc.int/resource/docs/2008/smsn/ngo/025.pdf>. [accessed 8 January 2012].
- Greif, Avner, and David D. Laitin. 2004. "A Theory of Endogenous Institutional Change." *American Political Science Review* 98(4): 633–52.
- Grieco, Joseph M. 1990. *Cooperation Among Nations: Europe, America, and Non-Tariff Barriers to Trade*. Ithaca: Cornell University Press.
- Gruber, Lloyd. 2000. *Ruling the World: Power Politics and the Rise of Supranational Institutions*. Princeton University Press.
2005. "Power Politics and the Institutionalization of International Relations." In *Power in Global Governance*. Michael Barnett and Raymond Duvall (eds.). Cambridge University Press. pp. 102–29.
- Haas, Ernst B. 1980. "Why Collaborate? Issue-Linkage and International Regimes." *World Politics* 32(3): 357–405.
- Haas, Peter M., Robert O. Keohane, and Marc A. Levy. 1993. *Institutions for the Earth: Sources of Effective International Environmental Protection*. Cambridge, MA: MIT Press.

- Hall, Peter A., and Rosemary C. R. Taylor. 1996. "Political Science and the Three New Institutionalisms." *Political Studies* 44(5): 936–57.
- Hampson, Fen Osler, with Michael Hart. 1995. *Multilateral Negotiations: Lessons from Arms Control, Trade, and the Environment*. Baltimore: Johns Hopkins University Press.
- Hayes-Renshaw, Fiona, Wim Van Aken, and Helen Wallace. 2006. "When and Why the EU Council of Ministers Votes Explicitly." *Journal of Common Market Studies* 44(1): 161–94.
- Hertsgaard, Mark. 2011. "The Cancún Compromise." *Nation*. 3 January 2011. pp. 4–6.
- Hoge, Warren. 2007a. "Hopes Dim for UN Solution for Kosovo." *New York Times*. 20 December 2007.
- 2007b. "US May Bypass the UN for Kosovo Independence." *New York Times*. 14 July 2007.
- 2007c. "World Briefing I United Nations: New US Ambassador Starts Job." *New York Times*. 24 April 2007.
- Hooghe, Lisbet. 2002. *The European Commission and the Integration of Europe: Images of Governance*. New York: Cambridge University Press.
- Hopmann, P. Terrence. 1995. "Two Paradigms of Negotiation: Bargaining and Problem Solving." *Annals of the American Academy of Political and Social Science* 542: 24–47.
1996. *The Negotiation Process and the Resolution of International Conflicts*. Columbia, SC: University of South Carolina Press.
- Huth, Paul and Todd Allee. 2003. *The Democratic Peace and Territorial Conflict in the Twentieth Century*. New York: Cambridge University Press.
- Iida, Keisuke. 1993. "When and How Do Domestic Constraints Matter? Two-Level Games with Uncertainty." *Journal of Conflict Resolution* 37(3): 403–26.
- Jönsson, Christer. 2002. "Cognitive Theory." In *International Negotiation: Analysis, Approaches, Issues*. 2nd edn. Victor A. Kremenyuk (ed.). San Francisco: Jossey-Bass, pp. 270–87.
- Jupille, Joseph. 2004. *Procedural Politics: Issues, Influence, and Institutional Choice in the European Union*. Cambridge University Press.
- Keohane, Robert O. 1982. "The Demand for International Regimes." *International Organization* 36(2): 325–55.
1984. *After Hegemony*. Princeton: Princeton University Press.
1988. "International Institutions: Two Approaches." *International Studies Quarterly* 32(4): 379–96.
1989. "Neoliberal Institutionalism: A Perspective on World Politics." In *International Institutions and State Power: Essays in International Relations Theory*. Robert O. Keohane (ed.). Boulder: Westview Press.
1993. "Institutionalist Theory and the Realist Challenge after the Cold War." In *Neorealism and Neoliberalism: The Contemporary Debate*. David A. Baldwin (ed.). New York: Columbia University Press.

- Keohane, Robert O., and Joseph S. Nye. 1977. *Power and Interdependence: World Politics in Transition*. Boston: Little, Brown.
- Knowlton, Brian. 2008. "Obama Promises Action on Climate Change." *New York Times*. 18 November 2008.
- König, Thomas, and Thomas Bräuninger. 2000. "Decisiveness and Inclusiveness: Two Aspects of the Intergovernmental Choice of European Voting Rules." *Homo Oeconomicus* 17(1/2): 1–17.
- Koremenos, Barbara. 2005. "Contracting around International Uncertainty." *American Political Science Review* 99(4): 549–65.
- Kosovo Compromise Staff. 2008. "UNMIK and EULEX Signing Memo of Understanding." 18 August 2008 [www.kosovocompromise.com/cms/item/topic/en.html?view=storyid=1231sectionId=1].
- Kramer, Andrew E. 2010. "After 17 Years, Russia Resolves US Objections for Entry into WTO" *New York Times*. 1 October 2010.
- Kramer, Roderick M., and David M. Messick (eds.). 1995. *Negotiation as a Social Process*. Thousand Oaks: Sage Publications.
- Krasner, Stephen D. 1983. *International Regimes*. Ithaca: Cornell University Press.
1984. "Approaches to the State: Alternative Conceptions and Historical Dynamics." *Comparative Politics* 16(2): 223–46.
1991. "Global Communication and National Power: Life on the Pareto Frontier." *World Politics* 43(3): 336–66.
- Krehbiel, Keith, Kenneth A. Shepsle, and Barry R. Weingast. 1987. "Why Are Congressional Committees Powerful?" *American Political Science Review* 81(3): 929–45.
- Kremenyuk, Victor A. (ed.). 2002. *International Negotiation: Analysis, Approaches, Issues*. San Francisco: Jossey-Bass.
- Krever, Mick, and Joe Vaccarello. 2011. "With Security Council Report, Palestinian Statehood Bid Stalled at UN." *CNN.com*. www.cnn.com/2011/11/11/world/meast/un-palestinians [accessed 1 June 2013].
- Kubosova, Lucia. 2006. "Centre-right and Socialist MEPs Near Deal on Services Law." *EU Observer*. 8 February 2006.
- Kulish, Nicholas, and C. J. Chivers. 2008. "Kosovo Is Recognized but Rebuked by Others." *New York Times*. 19 February 2008.
- Lake, David, and Robert Powell (eds.). 1999. *Strategic Choice and International Relations*. Princeton University Press.
- Lax, David A., and James K. Sebenius. 1986. *The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain*. New York: Free Press.
2006. *3-D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals*. Boston: Harvard Business School Press.
- LeMarquand, D. 1977. *International Rivers: The Politics of Cooperation*. Vancouver: Westwater Research Center.
- Levi, Margaret. 1988. *Of Rule and Revenue*. Berkeley: University of California Press.

- Lewis, Jeffrey. 1998. "Is the 'Hard Bargaining' Image of the Council Misleading? The Committee of Permanent Representatives and the Local Elections Drive." *Journal of Common Market Studies* 36(4): 479–504.
- Lipson, Charles. 1984. "International Cooperation in Economic and Security Affairs." *World Politics* 37(1): 1–23.
- Lohmann, Susanne. 1997. "Linkage Politics." *Journal of Conflict Resolution* 41(1): 38–67.
- McGinnis, Michael D. 1986. "Issue Linkage and the Evolution of International Cooperation." *Journal of Conflict Resolution* 30(1): 141–70.
- McKelvey, Richard D. 1976. "Intransitivities in Multidimensional Voting Models and Some Implications for Agenda Control." *Journal of Economic Theory* 12 (3): 472–82.
1979. "General Conditions for Global Intransitivities in Formal Voting Models." *Econometrica* 47(5): 1085–112.
- McKelvey, Richard D., and Peter C. Ordeshook. 1984. "An Experimental Study of the Effects of Procedural Rules on Committee Behavior." *Journal of Politics* 46(1): 182–205.
- McKelvey, Richard D., and Norman Schofield. 1987. "Generalized symmetry conditions at a core point." *Econometrica* 55(4): 923–33.
- McKibben, Heather Elko. 2010. "Issue Characteristics, Issue Linkage, and States' Choice of Bargaining Strategies in the European Union." *Journal of European Public Policy* 17(5): 694–707.
2013. "The Effect of Structures and Power on State Bargaining Strategies." *American Journal of Political Science* 57(2): 411–27.
- Mahoney, James, and Kathleen Thelen (eds.). 2010. *Explaining Institutional Change: Ambiguity, Agency, and Power*. Cambridge University Press.
- Majone, Giandomenico. 1989. *Evidence, Argument and Persuasion in the Policy Process*. New Haven: Yale University Press.
- Malone, David. 1998. *Decision-Making in the UN Security Council: The Case of Haiti 1990–1997*. New York: Oxford University Press.
- Mansfield, Edward D. 1994. *Power, Trade, and War*. Princeton University Press.
- Martin, Lisa L. 1992a. *Coercive Cooperation: Explaining Multilateral Economic Sanctions*. Princeton University Press.
- 1992b. "Institutions and Cooperation: Sanctions During the Falkland Islands Conflict." *International Security* 16(4): 143–78.
1993. "Credibility, Costs, and Institutions: Cooperation on Economic Sanctions." *World Politics* 45(3): 406–432.
1994. "Heterogeneity, Linkage, and Commons Problems." *Journal of Theoretical Politics* 6(4): 473–93.
- Mearsheimer, John J. 1994/95. "The False Promise of International Institutions." *International Security* 19(3): 5–49.

2001. *The Tragedy of Great Power Politics*. New York: W. W. Norton & Company.
- Meller, Paul. 2004. "France Splits with Europe over Farm Subsidy Plan." *New York Times*. 11 May 2004.
- Miliband, Ed. 2009. "The Road from Copenhagen." *Guardian*. 21 December 2009, p. 28.
- Miller, Gary J. 1992. *Managerial Dilemmas: The Political Economy of Hierarchy*. Cambridge University Press.
- Mo, Jongryn. 1995. "Domestic Institutions and International Bargaining: The Role of Agent Veto in Two-Level Games." *American Political Science Review* 89(4): 914–24.
- Moe, Terry M. 1990. "Political Institutions: The Neglected Side of the Story." *Journal of Law, Economics, and Organization* 6: 213–66.
- Moravcsik, Andrew. 1993. "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach." *Journal of Common Market Studies* 31(4): 473–524.
1998. *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. Ithaca: Cornell University Press.
- Morgan, T. Clifton. 1990. "Issue Linkages in International Crisis Bargaining." *American Journal of Political Science* 34(2): 311–33.
- Morrow, James D. 1992. "Signaling Difficulties with Linkage in Crisis Bargaining." *International Studies Quarterly* 36(2): 153–72.
1999. "The Strategic Setting of Choices: Signaling, Commitment and Negotiation in International Relations." In *Strategic Choice and International Relations*. David Lake and Robert Powell (eds.). Princeton University Press.
- Most, Benjamin A. and Harvey Starr. 1989. *Inquiry, Logic, and International Politics*. Columbia, SC: University of South Carolina Press.
- Muthoo, Abhinay. 1999. *Bargaining Theory with Applications*. New York: Cambridge University Press.
- Myers, Steven Lee, and Choe Sang-Hun. 2012. "North Koreans Agree to Freeze Nuclear Work; US To Give Food Aid." *New York Times*. 1 March 2012, p. A1.
- Narlikar, Amrita, and John Odell. 2006. "The Strict Distributive Strategy for a Bargaining Coalition: The Like Minded Group in the World Trade Organization." In *Negotiating Trade: Developing Countries in the WTO and NAFTA*. John Odell (ed.). Cambridge University Press, pp. 115–44.
- Nash, John F. Jr. 1950a. "The Bargaining Problem." *Econometrica* 18(2): 155–62.
- 1950b. "Equilibrium Points in n-person Games." *Proceedings of the National Academy of Sciences* 36(1): 48–9.
1951. "Non-Cooperative Games." *The Annals of Mathematics* 54(2): 286–95.
1953. "Two-Person Cooperative Games." *Econometrica* 21(1): 128–40.
- New York Times*. 2006. "Serbia Election May Delay Kosovo Proposal." 4 October.

- Nierenberg, Gerard I. 1968. *The Art of Negotiating: Psychological Strategies for Gaining Advantageous Bargains*. Portland: Hawthorn Books.
- Nierenberg, Gerard I., and Henry H. Calero. 2009. *The New Art of Negotiating: How to Close Any Deal*. Garden City Park, NY: Square One Publishers.
- North, Douglass C. 1981. *Structure and Change in Economic History*. New York: W.W. Norton.
1990. *Institutions, Institutional Change, and Economic Performance*. New York: Cambridge University Press.
- North, Douglass C., and Robert Paul Thomas. 1973. *The Rise of the Western World: A New Economic History*. New York: Cambridge University Press.
- Odell, John S. 2000. *Negotiating the World Economy*. Ithaca: Cornell University Press.
2002. "Creating Data on International Negotiation Strategies, Alternatives and Outcomes." *International Negotiation* 7(1): 39–52.
2010. "Three Islands of Knowledge about Negotiation in International Organizations." *Journal of European Public Policy* 17(5): 619–32.
- Odell, John S. (ed.). 2006. *Negotiating Trade: Developing Countries in the WTO and NAFTA*. New York: Cambridge University Press.
- Odell, John S., and Susan K. Sell. 2006. "Reframing the Issue: The WTO Coalition on Intellectual Property and Public Health, 2001." In *Negotiating Trade: Developing Countries in the WTO and NAFTA*. John Odell (ed.). New York: Cambridge University Press, pp. 85–114.
- Oneal, John R., Frances H. Oneal, Zeev Maoz, and Bruce Russett. 1996. "The Liberal Peace: Interdependence, Democracy and International Conflict, 1950–1985." *Journal of Peace Research* 33(1): 11–28.
- Oye, Kenneth. 1986. "Explaining Cooperation under Anarchy: Hypotheses and Strategies." In *Cooperation Under Anarchy*. K. Oye (ed.) Princeton University Press.
- Pierson, Paul. 2000. "The Limits of Design: Explaining Institutional Origins and Change." *Governance* 13(4): 475–99.
2004. *Politics in Time: History, Institutions, and Social Analysis*. Princeton University Press.
- Poast, Paul. 2012. "Does Issue Linkage Work? Evidence from European Alliance Negotiations, 1860 to 1945." *International Organization* 66(2): 277–310.
- Pollack, Mark A. 2003. *The Engines of European Integration: Delegation, Agency, and Agenda Setting in the EU*. Oxford University Press.
- Polachek, S. 1978. "Dyadic Dispute: An Economic Perspective." *Peace Science Society (International) Papers* 28: 67–80.
- Powell, Robert. 1991. "Absolute and Relative Gains in International Relations Theory." *American Political Science Review* 85(4): 1303–20.
2002. "Bargaining Theory and International Conflict." *Annual Review of Political Science* 5(1): 1–30.

- Pruitt, Dean G. 1981. *Negotiation Behavior*. New York: Academic Press.
- Przeworski, Adam, and Henry Teune. 1970. *The Logic of Social Inquiry*. Malabar: Krieger Publishing Company.
- Putnam, Robert D. 1988. "Diplomacy and Domestic Politics: The Logic of Two-Level Games." *International Organization* 42(3): 427–60.
- Raiffa, Howard. 1982. *The Art and Science of Negotiation*. Cambridge, MA: Harvard University Press.
- Rapp, Tobias, Christian Schwägerl, and Gerald Traufetter. 2010. "How China and India Sabotaged the UN Climate Summit." *Der Spiegel*. 5 May 2010.
- Rathbun, Brian. 2011a. "Before Hegemony: Generalized Trust, International Cooperation and the Design of International Organizations." *International Organization* 65(2): 243–73.
- 2011b. *Trust in Cooperation: The Creation of International Security Institutions and the Domestic Politics of American Multilateralism*. Cambridge University Press.
- Rector, Chad. 2009. *Federations: The Political Dynamics of Cooperation*. Ithaca: Cornell University Press.
- Reiter, Dan. 2003. "Exploring the Bargaining Model of War." *Perspectives on Politics* 1(1): 27–43.
- Rettman, Andrew. 2005. "Polish Workers Hurl Protests at French Embassy." *EU Observer*. 15 July 2005.
- 2007a. "France and NATO Welcome Ahtisaari Plan for Kosovo Future." *EU Observer*. 29 January 2007.
- 2007b. "West May Agree to Delay Kosovo Solution, Russia Says." *EU Observer*. 29 May 2007.
- Rettman, Andrew, and Mark Beunderman. 2007. "EU Softens Stance on Serbia War Crimes." *EU Observer*. 12 February 2007.
- Rettman, Andrew and Ekrem Krasniqi. 2007. "EU Barter with Serbia as Kosovo Tensions Mount." *EU Observer*. 17 May 2007.
- Reuters. 2010. "Russian Official Sounds Positive Note on Arms Deal with US." 22 January 2010.
- Ricupero, Rubens. 1998. "Integration of Developing Countries into the Multilateral Trading System." In *The Uruguay Round and Beyond: Essays in Honor of Arthur Dunkel*. Jagdish Bhagwati and Mathias Hirsch (eds.). Ann Arbor: University of Michigan Press, pp. 9–36.
- Riker, William H. 1986. *The Art of Political Manipulation*. New Haven: Yale University Press.
- Risse, Thomas. 2000. "'Let's Argue!': Communicative Action in World Politics." *International Organization* 54(1): 1–39.
- Rosendorff, B. Peter. 2005. "Stability and Rigidity: Politics and Design of the WTO's Dispute Settlement Procedure." *American Political Science Review* 99(3): 389–400.

- Rosendorff, B. Peter, and Helen V. Milner. 2001. "The Optimal Design of International Trade Institutions: Uncertainty and Escape." *International Organization* 55(4): 829–57.
- Rubin, Jeffrey Z. 2002. "The Actors in Negotiation." In *International Negotiation: Analysis, Approaches, Issues*. 2nd edn. Victor A. Kremenynuk (ed.). San Francisco: Jossey-Bass, pp. 97–109.
- Rubinstein, Ariel. 1982. "Perfect Equilibrium in a Bargaining Model." *Econometrica* 50(1): 97–110.
- Ruggie, John Gerard. 1998. *Constructing the World Polity: Essays on International Institutionalization*. New York: Routledge.
- Russett, Bruce, and J. Oneal. 2001. *Triangulating Peace: Democracy, Interdependence, and International Organizations*. New York: W.W. Norton.
- Schalk, Jelmer, René Torenvlied, Jeroen Weesie, and Frans Stokman. 2007. "The Power of the Presidency in EU Council Decision-Making." *European Union Politics* 8(2): 229–50.
- Schelling, Thomas. 1960. *The Strategy of Conflict*. Cambridge, MA: Harvard University Press.
1966. *Arms and Influence*. New Haven: Yale University Press.
- Schneider, Christina. 2011. "Weak States and Institutionalized Bargaining Power in International Organizations." *International Studies Quarterly* 55(2): 331–55.
- Schofield, Norman. 1978. "Instability of Simple Dynamic Games." *Review of Economic Studies* 45(3): 575–94.
- Schröder, Heike. 2001. *Negotiating the Kyoto Protocol: An Analysis of Negotiation Dynamics in International Negotiations*. Lit Verlag.
- Schultz, Kenneth A. 1998. "Domestic Opposition and Signaling in International Crises." *American Political Science Review* 92(4): 829–44.
2001. *Democracy and Coercive Diplomacy*. New York: Cambridge University Press.
- Sebenius, James K. 1983. "Negotiation Arithmetic: Adding and Subtracting Issues and Parties." *International Organization* 37(2): 281–316.
1992. "Challenging Conventional Explanations of International Cooperation: Negotiation Analysis and the Case of Epistemic Communities." *International Organization* 46(1): 323–65.
- Sevastopulo, Demetri. 2007. "Washington Ready to Soften Line before N Korea Disarms." *Financial Times*. 7 February 2007, p. 7.
- Shepsle, Kenneth A. 1979. "Institutional Arrangements and Equilibrium in Multidimensional Voting Models." *American Journal of Political Science* 23(1): 27–59.
1986. "Institutional Equilibrium and Equilibrium Institutions." In *Political Science: The Science of Politics*. Herbert F. Weisberg (ed.). New York: Agathon Press, pp. 51–81.

1989. "Studying Institutions: Some Lessons from the Rational Choice Approach." *Journal of Theoretical Politics* 1(2): 131–47.
- Shepsle, Kenneth A., and Barry R. Weingast. 1984. "Uncovered Sets and Sophisticated Voting Outcomes with Implications for Agenda Institutions." *American Journal of Political Science* 28(1): 49–74.
1987. "The Institutional Foundations of Committee Power." *American Political Science Review* 81(1): 85–104.
- Simmons, Beth A. 1998. "Compliance with International Agreements." *Annual Review of Political Science* 1: 75–93.
2000. "International Law and State Behavior: Commitment and Compliance in International Monetary Affairs." *American Political Science Review* 94(4): 819–35.
2010. "Treaty Compliance and Violation." *Annual Review of Political Science* 13: 273–96.
- Singer, J. David. 1963. "Inter-nation Influence: A Formal Model." *American Political Science Review* 57(2): 420–30.
- Singh, J. P. 2006. "The Evolution of National Interests: New Issues and North–South Negotiations during the Uruguay Round." In *Negotiating Trade: Developing Countries in the WTO and NAFTA*. John Odell (ed.). New York: Cambridge University Press. pp. 41–84.
2008. *Negotiation and the Global Information Economy*. Cambridge University Press.
- Slantchev, Branislav L. 2010. *Military Threats: The Costs of Coercion and the Price of Peace*. New York: Cambridge University Press.
- Slapin, Jonathan B. 2011. *Veto Power: Institutional Design in the European Union*. Ann Arbor: University of Michigan Press.
- Smith, Craig S. 2007. "Serbia Rejects Plan that Could Lead to Kosovo Independence." *New York Times*. 3 February 2007.
- Snidal, Duncan. 1991. "Relative Gains and the Pattern of International Cooperation." *American Political Science Review* 85(3): 701–26.
- Song, Jung-A. 2007. "North Korea 'Flexible' on Nuclear Offer." *Financial Times*. 25 January 2007, p. 4.
- Spongenberg, Helena. 2007a. "EU Gearing Up for Thorny Kosovo Status Debate." *EU Observer*. 15 January 2007.
- 2007b. "EU Will Not Back Kosovo Unilateral Independence." *EU Observer*. 22 June 2007.
- Stasavage, David. 2004. "Open-Door or Closed-Door? Transparency in Domestic and International Bargaining." *International Organization* 58(4): 667–703.
- Stein, Arthur A. 1990. *Why Nations Cooperate: Circumstance and Choice in International Relations*. Ithaca: Cornell University Press.
- Stein, Janice Gross (ed.). 1989. *Getting to the Table: The Processes of International Prenegotiation*. Baltimore: Johns Hopkins Press.

- Steinberg, Richard H. 2002. "Explaining Similarities and Differences across International Trade Organizations." In *The Greening of Trade Law: International Trade Organizations and Environmental Issues*. Richard H. Steinberg (ed.). Lanham: Rowman & Littlefield Publishers, Inc., pp. 277–309.
- Stewart, Terence P. (ed.). 1993. *The GATT Uruguay Round: A Negotiating History. Volume I: Commentary*. Boston: Kluwer Law and Taxation.
- Tallberg, Jonas. 2003. "The Power of the Presidency: Brokerage, Efficiency and Distribution in EU Negotiations." *Journal of Common Market Studies* 42(5): 999–1022.
- Tarar, Ahmer. 2001. "International Bargaining with Two-Sided Domestic Constraints." *Journal of Conflict Resolution* 45(3): 320–40.
2005. "Constituencies and Preferences in International Bargaining." *Journal of Conflict Resolution* 49(3): 383–407.
- Thelen, Kathleen. 1999. "Historical Institutionalism in Comparative Politics." *Annual Review of Political Science* 2: 369–404.
- Thompson, Alexander. 2010. "Rational Design in Motion: Uncertainty and Flexibility in the Global Climate Regime." *European Journal of International Relations* 16(2): 269–96.
- Thomson, Robert, Frans N. Stokman, Christopher H. Aachen, and Thomas König (eds.). 2006. *The European Union Decides*. Cambridge University Press.
- Tir, Jaroslav, and Douglas M. Stinnett. 2011. "The Institutional Design of Riparian Treaties: The Role of River Issues." *Journal of Conflict Resolution* 55(4): 606–31.
- Tollison, Robert D., and Thomas D. Willett. 1979. "An Economic Theory of Mutually Advantageous Issue Linkages in International Negotiations." *International Organization* 33(4): 425–49.
- Tomlin, Brian W. 1989. "The Stages of Prenegotiation: The Decision to Negotiate North American Free Trade." In *Getting to the Table: The Processes of International Prenegotiation*. J. G. Stein (ed.). Baltimore: Johns Hopkins Press.
- Tsebelis, George. 1990. *Nested Games: Rational Choice in Comparative Politics*. Berkeley: University of California Press.
1994. "The Power of the European Parliament as a Conditional Agenda Setter." *American Political Science Review* 88(1): 128–42.
- Ulbirt, Cornelia, and Thomas Risse. 2005. "Deliberately Changing the Discourse: What Does Make Arguing Effective?" *Acta Politica* 40(3): 351–67.
- Underdal, Arild. 1994. "Leadership Theory: Rediscovering the Arts of Management." In *International Multilateral Negotiation: Approaches to Management Complexity*. I. William Zartman (ed.). San Francisco: Jossey-Bass, pp. 178–97.
- US Department of State. 2010. "Background Note: Egypt." www.state.gov/r/pa/ei/bgn/5309.htm [updated 10 November 2010, accessed 6 January 2012].

- US Department of State. 2011. "Background Note: Israel." www.state.gov/r/pa/ei/bgn/3581.htm [updated 1 December 2011, accessed 6 January 2012]
- Uslander, Eric M. 2002. *The Moral Foundations of Trust*. Cambridge University Press.
- Videmsek, Bostjan, and Dan Bilefsky. 2008. "Protesters Attack U.S. Embassy in Belgrade." *New York Times*. 22 February 2008.
- Voeten, Erik. 2001. "Outside Options and the Logic of Security Council Action." *American Political Science Review* 95(4): 845–58.
- Vucheva, Elitsa. 2008. "EU Kosovo Mission to Face Delay." *EU Observer*. 19 May 2008.
- Walton, Richard, and Robert McKersie. 1965. *A Behavioral Theory of Labor Negotiations*. New York: McGraw-Hill.
- Waltz, Kenneth N. 1979. *Theory of International Politics*. Boston: McGraw-Hill.
- Warntjen, Andreas. 2008. "The Council Presidency: Power Broker or Burden? An Empirical Analysis." *European Union Politics* 9(3): 315–38.
- Watkins, Kevin. 1992. *Fixing the Rules: North-South Issues in International Trade and the GATT Uruguay Round*. London: Catholic Institute of International Relations.
- White House. 2009. Briefing, "Press Gaggle by a Senior Administration Official (as Released by the White House). Location: Aboard Air Force One en route to Andrews Air Force Base." *Federal News Service, Inc.* 18 December 2009.
2010. Office of the Press Secretary. "Read-out of the President's Call with Russian President Medvedev." 1 October 2010. [www.whitehouse.gov/the-press-office/2010/10/01/read-out-presidents-call-with-russian-president-medvedev].
- Wiener, Jarrod. 1995. *Making Rules in the Uruguay Round of the GATT: A study of International Leadership*. Brookfield, VT: Dartmouth Publishing Company.
- Williamson, Oliver E. 1975. *Markets and Hierarchies: Analysis and Antitrust Implications*. New York: Free Press.
- Winham, Gilbert R. 1989. "The Prenegotiation Phase of the Uruguay Round." In *Getting to the Table: The Process of International Prenegotiation*, J. Stein (ed.). Baltimore: Johns Hopkins Press, pp. 44–67.
- Wolfe, Robert. 2009. "The WTO Single Undertaking as Negotiating Technique and Constitutive Metaphor." *Journal of International Economic Law*: 1–24.
- Wood, Nicholas. 2006. "Kosovo Leaders Confer in Vienna, but Little Progress is Seen." *New York Times*. 25 July 2006.
- World Trade Organization. 2001. Doha WTO Ministerial Declaration. WT/MIN(01)/DEC/1. Adopted 14 November 2001.
- Wriggins, W. H. 1976. "Up for Auction: Malta Bargains with Great Britain, 1971. In *The 50% Solution*. I. William Zartman (ed.). Garden City, NY: Anchor Press/Doubleday, pp. 208–34.
- Wright, Tom. 2005. "Europe Remains Divided on Farm Subsidies." *New York Times*. 21 October, 2005.

- Zartman, I. William (ed.). 1987. *Positive Sum: Improving North-South Negotiations*. New Brunswick: Transaction Books.
1994. *International Multilateral Negotiation: Approaches to Management Complexity*. San Francisco: Jossey-Bass.
- Zartman, I. William, and Maureen R. Berman (eds.). 1982. *The Practical Negotiator*. New Haven: Yale University Press.
- Zutshi, B.K. 1998. "Bringing TRIPS into the Multilateral Trading System." In *The Uruguay Round and Beyond: Essays in Honor of Arthur Dunkel*. Jagdish Bhagwati and Mathias Hirsch (eds.). Ann Arbor: University of Michigan Press, pp. 37-49.



Index

- absolute gains, 14–15, 66. *See also*
absolute/relative gains context
bargaining power and, 67, 71, 93–4,
122, 123, 124–5, 135, 136–8,
140, 143, 159–61, 161–2, 165–6,
250–1
BATNA and. *See* absolute gains,
bargaining power and
definition of, 66
Financial Perspective (2007–2013)
and, 136–8
hypotheses regarding, 76, 94, 100
absolute/relative gains context, 49,
66–70
BATNA with, 14–5, 67–8, 68nn33–4,
70, 71, 72, 93–4, 122, 123,
124–5, 135, 136–8, 140, 143,
159–61, 161–2, 165–6, 250–1
in EU negotiations, 114–16
examples of empirical effects of,
136–8, 161–5, 168–71
in Financial Perspective (2007–2013)
negotiations, 136–8
hypotheses regarding, 76, 94, 100
hypothesis testing regarding, 121–5,
159–61, 165–8
implications for bargaining
strategies, 70–6
issue linkage structure and, 57n15,
88–9
in Kosovo status process
negotiations, 220–1, 224–6,
231, 235, 241, 244
measurement of, 114–16, 153–5,
282–3
rule-changing strategies and, 88–9,
93–4
rule-compliant strategies and, 66–76
in Uruguay Round negotiations,
153–5, 153n20, 155n24
zone of agreement and, 67–9, 72, 74
Africa, 115–16, 195–6, 198, 210, 212
Agreement on Trade-Related Aspects
of Intellectual Property Rights
(TRIPS Agreement), 9, 175
Ahtisaari, Martti, 216–17, 218–19,
223–4
Ahtisaari Plan 216, 223–4,
Alliance of Small Island States
(AOSIS), 193–5, 193n26, 197, 198,
201, 205, 210, 212
alternative to agreement. *See*
no-agreement alternative
AOSIS. *See* Alliance of Small Island
States
asymmetric agreement, 69–70, 71, 74
in EU context, 134–5, 140, 143
in Uruguay Round, 164, 175
Australia, 156, 162, 163, 165, 179, 193,
193n24
balance of payment issues, 151–2, 163
Bali Action Plan (BAP), 179–80, 191,
192, 192n20
Bali COP. 179–80, 183n5, 184n9, 187,
187n15, 191, 202
Ban Ki-Moon, 218n8, 230, 235n67,
240, 241, 241n84, 242, 243,
244, 247
BAP. *See* Bali Action Plan
bargaining. *See also* international
bargaining
definition of, 11, 11n19, 12n20
over time, 18–19, 257–8

- phases of. *See* bargaining phases
- strategies in. *See* bargaining strategies; rule-changing strategies; rule-changing strategies (confrontational); rule-changing strategies (cooperative); rule-compliant strategies; rule-compliant strategies (confrontational); rule-compliant strategies (cooperative); strategies
- bargaining agenda. *See* issue linkage structure
- bargaining phases, 18–19, 43, 90, 257–8
 - in climate change negotiations, 178, 180
 - in Copenhagen COP negotiations, 199–200
 - in EU negotiations, 107, 108
 - in Kosovo status process negotiations, 215–18
 - in Kyoto Protocol negotiations, 57–61
 - in Services Directive negotiations, 106–7, 126–35, 126n50
 - in Uruguay Round negotiations, 145, 147–8, 149–50
- bargaining power. *See also* best alternative to a negotiated agreement (BATNA); beneficial BATNA; costly BATNA
 - BATNA and, 16–7, 17–8, 61–2, 61n18, 252–7
 - definition of, 17
 - in Financial Perspective (2007–13) negotiations, 136–8
 - in Kosovo status process negotiations, 219, 225, 229–31, 235, 237, 239, 240–1
 - in Services Directive negotiations, 129–31
 - in Uruguay Round negotiations, 152–3, 159–61, 161–2, 162–4
- bargaining rules. *See* rules of the game
- bargaining strategies, 1, 3–5, 12
 - BATNA-altering. *See* BATNA-altering strategies
 - BATNA-worsening. *See* BATNA-altering strategies
 - changes in. *See* rule-changing strategies
 - in climate change negotiations, 189–91, 199–209
 - coercive. *See* rule-changing strategies (confrontational); rule-compliant strategies (confrontational)
 - confrontational. *See* rule-changing strategies (confrontational); rule-compliant strategies (confrontational)
 - cooperative. *See* rule-changing strategies (cooperative); rule-compliant strategies (cooperative)
 - definition of, 12
 - in EU negotiations, 105, 116–8, 120–5, 131–5, 138–40
 - in Financial Perspective (2007–13) negotiations, 138–40
 - game-theoretic literature and, 20–2, 20n30
 - institutions literature and, 24–9, 24n46, 25n49
 - in Kosovo status process negotiations, 220–2, 227–8, 232–4, 232n59, 235–6, 235nn66–7, 236–40, 242–3, 244–5
 - issue linkage. *See* issue linkage strategies
 - limitations on, 79–81
 - negotiation analysis literature and, 22–4, 23nn44–5
 - non-cooperative. *See* rule-changing strategies (confrontational); rule-compliant strategies (confrontational)
 - rule-changing. *See* rule-changing strategies
 - rule-compliant. *See* rule-compliant strategies

- bargaining strategies (*cont.*)
 - in Services Directive negotiations, 106–7, 131–5
 - typology of. *See* bargaining strategies typology.
 - in Uruguay Round negotiations, 162–5, 168–71
 - veto and, 2, 5, 6, 7, 9, 26, 27, 36, 37, 63, 116, 117, 138–9, 142, 157, 164, 171, 200, 205, 209, 219, 224, 232, 233, 253, 254
- bargaining strategies typology, 35–47
 - BATNA-altering strategies, 43–5
 - confrontational (highly), 35–8
 - confrontational (somewhat), 38
 - cooperative (highly), 39–40
 - cooperative (somewhat), 40–1
 - issue linkage strategies, 46–7
 - rule-changing strategies, 42–7
 - rule-compliant strategies, 35–41
- BASIC. *See* Brazil, South Africa, India, China
- BATNA. *See* best alternative to negotiated agreement
- BATNA-altering strategies, 10–1, 15n26, 18, 43–5, 43nn11–13, 89–92, 93–4, 99, 261
 - in climate change negotiations, 185, 211–12
 - coercion and, 5, 17, 43–4, 78, 80, 84, 94, 96, 98–9, 211, 214, 255–6
 - costs of, 2, 84–5, 96
 - credibility of, 79, 80
 - in EU negotiations, 140–3
 - in Kosovo status process negotiations, 217–8, 227–8, 232–4, 235–6, 236–240, 244–5
 - limitations of, 79–80
 - in Uruguay Round negotiations, 171–5
- BATNA-worsening strategies. *See* BATNA-altering strategies
- beneficial BATNA. *See also* best alternative to negotiated agreement (BATNA)
 - in EU negotiations, 113–14, 122, 141
 - in Financial Perspective (2007–2013) negotiations, 137
- best alternative to negotiated agreement (BATNA). *See also* beneficial BATNA; costly BATNA
 - in absolute/relative gains context, 14–5, 67–8, 68nn33–4, 70, 71, 72, 93–4, 122, 123, 124–5, 135, 136–8, 140, 143, 159–61, 161–2, 165–6, 250–1
 - bargaining power and, 16–7, 17–18, 61–2, 61n18, 252–7
 - beneficial nature of. *See* beneficial BATNA
 - in climate change negotiations, 185–7, 189–91, 201–2
 - costly nature of. *See* costly BATNA
 - definition of, 14, 61–2
 - in EU negotiations, 113–14, 122, 130, 137, 137n72, 141
 - in Financial Perspective (2007–2013) negotiations, 137
 - in Kosovo status process negotiations, 219, 225, 229–31, 235, 237, 239, 240–1, 246
 - in Malta–United Kingdom naval base negotiations, 64–6
 - material power and, 17–18, 90–2, 122, 142, 159–61, 163, 176–7, 185–6, 252–7
 - measurement of, 113–14, 152–3, 185–7, 276–82
 - no-agreement alternative and, 4, 61–2
 - set of available alternatives to agreement and, 4, 61–2
 - in Uruguay Round negotiations, 152–3, 159–61, 161n33, 161–2, 162–4, 253–6
 - in Kosovo status process negotiations, 219, 225, 229–31, 235, 237, 239, 240–1
 - measurement of, 113–4, 152–3, 276–82
 - predictions regarding, 76, 89, 100
 - in Services Directive negotiations, 129–31
 - in Uruguay Round negotiations, 152–3, 159–61, 161n33, 161–2, 162–4

- blocking coalition, 36, 117, 131, 141
 blocking minority. *See* blocking coalition
- Brazil, 60, 154, 156, 169, 195, 197, 200. *See also* Brazil, South Africa, India, China (BASIC) countries
- Brazil, South Africa, India, China (BASIC) countries, 8, 10, 186n12, 199–200, 206–10, 212
- Brown, Gordon, 205
- Cairns Group, 161, 162–3, 165
- Camp David Accords, 1, 47, 82, 84
- Canada, 149, 149n15, 165, 172–7, 193n24
- Cancún COP, 87, 182–4, 185, 204, 212, 260
 BATNA relating to, 185–6
 issue linkage strategies of, 87, 183–4, 260
 issue linkage structure of, 87, 182–3
- capabilities. *See* material capabilities
- carbon capture and storage (CCS), 195, 196–7
- CDM. *See* Clean Development Mechanism
- China, 8, 10, 37, 46–7, 58, 60, 83–4, 182, 184, 194, 195, 200, 203–4, 205, 206–9, 210. *See also* Brazil, South Africa, India, China (BASIC) countries
- Clean Development Mechanism (CDM), 59, 60, 195–7, 198
 carbon capture and storage (CCS) and, 195, 196–7
 regional distribution of, 195, 196
- climate change negotiations. *See also* Bali COP; Cancún COP; Copenhagen COP; high level segment in Copenhagen; Kyoto Protocol negotiations
- Bali COP negotiations, 179–80, 183n5, 184n9, 187, 187n15, 191, 202
- Cancún COP negotiations, 87, 182–4, 185, 204, 212, 260
- conclusions from analysis of, 212–3
- Copenhagen COP negotiations, 7–8, 179–80, 186n12, 191–212, 259
- issue linkage strategies in, 8, 59, 181, 183–4, 185–6, 189–91, 199–200, 202–3, 206–7
- Kyoto Protocol negotiations, 57–61
- LCA, 180, 192, 192n20, 194
- SBI, 178
- SBSTA, 178
- statistical analysis of, 187–91
- UNFCCC, 178, 179, 191, 198, 202, 212
- Clinton, Hillary, 208
- coercion. *See* BATNA-altering strategies; rule-changing strategies (confrontational)
- Committee of Permanent Representatives (COREPER), 105n1, 108
- concession-extracting tactics, 35–7, 90. *See also* rule-changing strategies (confrontational); rule-compliant strategies (confrontational), highly confrontational
- in climate change negotiations, 200, 204–5
- examples of, 37–8, 40, 44–5, 64–5, 71, 90–2, 261–2
- in EU negotiations, 116–17, 131–2, 138–9
- in Kosovo status process negotiations, 232–4, 235–6, 236–9
- in Uruguay Round negotiations, 157, 171, 172–4
- concessions. *See also* rule-changing strategies (cooperative); rule-compliant strategies (confrontational), somewhat confrontational
- costs associated with, 85, 98
- in EU negotiations, 107, 133–4, 138–40
- exchange of, 5, 8, 10, 15, 39–40, 47, 52, 55–6, 60, 73–4, 82, 86–7, 88, 93–4, 98, 133–4, 174–5, 199–200, 209, 244–5, 259

- concessions (*cont.*)
 in Financial Perspective (2007–13)
 negotiations, 138–40
 in Kosovo status process
 negotiations, 227–8, 244–5
 promises of, 38, 91, 96, 97, 98, 99,
 132, 211
 in Services Directive negotiations,
 107, 133–4 134n67
 in Uruguay Round negotiations,
 162–5, 169–71
- Conference of the Parties (COP). *See*
 Bali COP; Cancún COP;
 Copenhagen COP; high-level
 segment in Copenhagen; Kyoto
 Protocol negotiations
- confrontational strategies, 4. *See also*
 BATNA-altering strategies; issue
 linkage strategies, confrontational;
 rule-changing strategies,
 confrontational; rule-compliant
 strategies, confrontational
- consensus rule, 26, 210
 traditional, 170
- Contact Group (re Kosovo), 216, 224,
 225, 226, 229, 231n55
- contextual rules. *See* rules of the game
- Convention track. *See* long-term
 cooperative action
- cooperation. *See* international
 cooperation
- cooperative strategies, 3–4. *See also*
 issue linkage strategies;
 rule-changing strategies,
 cooperative; rule-compliant
 strategies, cooperative
 definition of, 3–4
- COP. *See* Conference of the Parties
- Copenhagen Accord, 209–12
- Copenhagen COP. *See also* high-level
 segment in Copenhagen
 Africa in, 195–6, 198, 210, 212
 AOSIS in, 193–4, 195, 197, 198, 201,
 205, 210, 212
 BASIC countries in, 8, 10, 186n12,
 199–200, 206–10, 212
 China in, 7–8, 200, 203–4, 205,
 206–9, 210
 divisive issues at, 192–7
 EU in, 7–8, 185, 193, 194, 199,
 202–3, 204, 205, 207–8, 210,
 211–12
 India in, 7–8, 182, 184, 194,
 199–200, 203–5, 206–9
 issues and sources of contention at,
 192–7
 Japan in, 193, 193n24, 200–1, 207–8
 Russia in, 193, 193n24, 198, 200–1
 single vs. two-track approach at,
 179–80, 192–4
 United States in, 8, 10, 179, 182,
 182n4, 186n12, 193, 193n24,
 198, 199–200, 202, 206–12
- COREPER. *See* Committee of
 Permanent Representatives
- costly BATNA, 14–16, 15n26, 18, 61–3,
 85, 89, 90–4
 in climate change negotiations,
 185–7, 189–91, 201–2
 in Copenhagen COP negotiations,
 201–2, 206
 in EU negotiations, 113–4, 130
 in Financial Perspective (2007–13)
 negotiations, 137
 in Kosovo status process
 negotiations, 246
 measurement of, 185–7, 276–82
 predictions regarding, 76, 89, 100
 in Services Directive negotiations,
 130
 in Uruguay Round negotiations, 170
- costs
 of coercion, 2, 80, 84, 96
 of concessions, 85, 98
 of defection, 97
 of rule-changing strategies, 84–5
- Council of European Union, 105, 107.
See also Council of Ministers
- Council of Ministers, 105, 107,
 109–110, 109n16, 110n17, 120
- country of origin principle, 127–9,
 131–3, 141–2
- credibility. *See* credible promise;
 credible threat
- credible promise, 79, 81, 82, 82n5, 84,
 92n29, 95, 97, 98

- credible threat, 63n23, 79, 81, 82n5, 83, 90, 95–6, 98, 99, 145–6, 152, 178n1
- BATNA-worsening, 79, 80
- to go-it-alone, 64, 82, 83, 145–6
- to refuse to concede, 71
- to use economic sanctions, 64, 65, 80, 83, 99, 145
- to use force, 16, 65, 80, 81–2, 91–2, 99, 145–6, 221
- rule-changing strategies and, 16, 65, 79, 95, 96, 98, 99, 103, 236, 255
- to veto, 63, 63n23, 122, 253
- crisis bargaining 12n22, 20n29, 42n10, 61–2, 63
- decision-making in internal EU negotiations, 105, 107, 109–10, 110n18, 110n22, 113, 118–19, 125, 251. *See also* European Union (EU)
- background on, 109–10
- co-decision relating to, 109, 110n18
- dynamic nature of, 106, 107
- Council of Ministers involved with, 105, 107, 109–10, 109n16, 110n17, 126, 141
- European Commission impact on, 110, 110n21, 126–7, 133, 139
- European Parliament involved in, 107, 109–10, 110n17, 126, 141
- strategies adopted in, 116–8, 120–5, 131–5, 138–40
- defection, 51, 97
- developed countries
- in Cancún COP, 182–3, 182n4, 183n5, 184
 - in Copenhagen negotiations, 193, 194–5, 197, 200–1, 205, 207
 - emissions and, 179, 182–3, 182n4, 192–3
 - in Kyoto Protocol negotiations, 57–61
 - in Uruguay Round negotiations, 145–6, 150, 152, 154–5, 157, 163–5, 170–1
- developing countries
- in Cancún COP, 182–3, 183n5, 184, 186
 - in Copenhagen, 192, 193, 195, 200, 205, 210
 - emissions and, 182–3, 182n4, 184, 192–3, 194–5, 207
 - in Kyoto Protocol negotiations, 58, 60
 - in Uruguay Round negotiations, 9–10, 144, 145–6, 148–9, 151–2, 154–5, 157, 157n28, 163–5, 170–1, 172, 172nn48–9, 174–5
- differently valued issues, 6, 13–14, 26, 50, 50n2. *See also* issue linkage structure; non-differently valued issues
- in climate change negotiations, 189, 191, 207–8
- definition of, 50, 50n2
- effect on bargaining strategies (empirical), 120–2, 133–4, 159, 161–2, 189, 209, 244–5, 247
- effect on bargaining strategies (theoretical), 52–7
- in EU negotiations, 112, 120–2, 128–9
 - and focal points, 52, 55–7, 60
 - ideal type, 50
 - in Kosovo status process negotiations, 243–4, 247
 - in Kyoto Protocol negotiations, 59–61
 - measurement of, 111–2, 151–2, 181–4
 - non-differently valued issues v., 50–1, 57
 - in Uruguay Round negotiations, 159, 161
 - and zone of agreement, 26, 50–1, 112, 152, 181
- dispute settlement (in GATT/WTO), 147, 169–70, 172n49
- Doha Round, 9–10, 38, 144–5
- Draft Final Act, 149, 150, 157, 161–2, 163–4, 165, 173–4, 175
- Dunkel, Arthur, 149, 173

- economic capabilities, 17, 63, 64, 83–4, 92, 92n29, 97, 119, 122, 158, 187, 201, 221, 226, 246, 254–5
- economic interdependence, 95–100, 95nn34–5
- economic sanctions. *See also* BATNA-altering strategies; rule-changing strategies (confrontational)
 - as a bargaining strategy, 1, 26, 43, 90
 - credibility of, 65, 83, 96
 - examples of threat to use, 2, 37, 40, 83, 99
 - examples of use of, 2, 39, 40, 44–5, 75, 99
 - limitations on use, 80
 - material capabilities and, 17, 255
 - negative effects of, 86, 96
- EEC. *See* European Economic Community
- Egypt, 1, 47, 82–3, 84
- emission reduction
 - at Cancún COP, 182–6
 - at Copenhagen COP, 192–4, 194–5, 203–4, 205, 207–8, 209
 - developed countries and, 179, 182–3, 182n4, 192–3
 - developing countries and, 182–3, 182n4, 184, 192–3, 194–5, 207
 - at Kyoto Protocol negotiations, 57–61, 179
 - legally binding nature of, 179, 185–6, 192, 193–4, 198, 203, 204, 205, 207, 208, 210, 212
 - Mexico's sidelining of requirements to, 185, 186
- empirical analysis. *See also* statistical analysis
 - case studies, 125–40, 161–5, 168–71, 191–212, 218–45
 - “most similar” case study (results of), 246–8
 - “most similar” case study (set-up of), 245–6
 - multilevel model, 119, 119n37, 158, 187
 - statistical tests (results of), 120–5, 159–61, 165–8, 188, 189–91
 - statistical tests (set-up of), 118–20, 158, 187–9
- EU. *See* European Union
- EU Rule of Law mission (EULEX), 217–18, 225, 234, 238–9, 241, 242–3, 243–5
- European Commission, 80, 107, 110, 110n19, 110n22, 126–8, 133, 135, 139, 141, 141n82, 142, 257
- European Economic Community (EEC). *See* European Union
- European Parliament, 107, 109–10, 110n17, 110n22, 118, 120, 126, 128, 132, 141–2
- European social model, 127–8
- European Union (EU). *See also* decision-making in internal EU negotiations; European Economic Community (EEC)
 - bargaining strategies in, 116–8, 120–5, 131–5, 138–40
 - in Copenhagen climate change negotiations, 7–8, 10, 185, 194–5, 199, 202–3, 207–8, 211–12
 - complexity of, 140–3
 - confrontational behavior of, 7, 38, 59, 164, 172–4, 205, 211–12
 - confrontational strategies within, 45, 107, 116–17, 131–3, 138–40, 141–2
 - cooperative behavior of, 7–8, 59, 60–1, 199, 202–3, 204, 205
 - cooperative strategies within, 86–7, 107, 117–18, 133–5, 138–40
 - decision-making background, 105, 109–10, 113, 118–19, 125
 - Financial Perspective (2007–13) and, 135–40, 135n69
 - in GATT, 149–50, 164, 172–5
 - interviews relating to, 107–8, 108n13, 108n15, 111, 113, 214–5
 - involvement in Kosovo status process, 214–15, 217–18, 222–3, 224–7, 228–9, 231–2,

- 233–4, 236, 237, 239, 241, 243, 244–5
- rule-changing behavior in, 45, 141–2
- rule-changing behavior of, 172–4, 205, 211–12, 60–1, 199, 202–3
- rule-compliant behavior in, 86–7, 107, 117–18, 133–5, 138–40
- rule-compliant behavior of, 7–8, 38, 59, 60–1, 164, 204
- Services Directive and, 106–7, 106n4, 109, 114–15, 125–35
- European-led “green room” meeting, 200, 203–6, 203n42
- exchange of concessions, 5, 8, 10, 15, 39–40, 47, 52, 55–6, 60, 73–4, 82, 86–7, 88, 93–4, 98, 133–4, 174–5, 199–200, 209, 244–5, 259
- Financial Perspective (2007–2013)
 - negotiations, 135–40
 - bargaining power and absolute gains with, 136–8
 - coalitions of interest with, 135
 - strategies for, 138–40, 138nn74–6
 - structural and cohesive funds with, 135–6, 140, 140n81
 - veto in, 138–9
- Finland, 126n49, 135, 136, 138, 139, 157
- focal point, 52, 55–7, 60, 133–4
- France, 45, 83, 113, 118, 126, 130, 131n58, 132, 135, 135n69, 137n72, 138, 139, 141, 142, 199, 216, 219, 236
- Freedom to Provide Services principle, 128, 128n56, 129, 133, 141
- game-theoretic literature, 20–2, 20n30
- GATS. *See* General Agreement on Trade in Services
- GATT. *See* General Agreement on Tariffs and Trade
- Gaza, 37
- GDP. *See* gross domestic product
- General Agreement on Tariffs and Trade (GATT), 144, 147
 - articles of, 151–2
 - BATNA relating to, 253–4
 - formation of, 144
 - limitations on rule-changing strategies, 78, 145–6
 - Uruguay Round of. *See* Uruguay Round negotiations
- General Agreement on Trade in Services (GATS), 148
- Germany, 45, 83, 113, 132, 135, 135n69, 136, 137n72, 138, 139, 141, 142, 199, 216, 219, 236
- Ghafoor Mohamed, Abdul, 211
- GNG. *See* Group on Negotiations in Goods
- GNS. *See* Group on Negotiations in Services
- go-it-alone strategy. *See also* rule-changing strategies (confrontational); threats, to go it alone
 - costs of, 80
 - credibility of, 80, 82, 83, 145–6
 - effect on status quo, 22, 22n40, 26, 43
 - examples of, 45, 82, 83, 232–3
 - material capabilities and, 82, 83
- Green Climate Fund, 184
- Green Room negotiations, 200, 203–6, 203n42
- gross domestic product (GDP)
 - of Kosovo, 221
 - material power and, 119, 122, 158, 187, 189–90, 191
- Group on Negotiations in Goods (GNG), 147
- Group on Negotiations in Services (GNS), 147
- Hedegaard, Connie, 211–12
- high-level segment in Copenhagen
 - bargaining strategies in, 199–209
 - China in, 199, 200, 203, 204–5, 206–8, 209
 - early days of, 200–3
 - European-led “green room” meeting in, 203–6
 - France in, 199
 - Germany in, 199, 204
 - India in, 203, 204–5, 206–7

- high-level segment in Copenhagen
(*cont.*)
 issues at stake, 192–8
 phases of, 199–200
 take-it-or-leave-it offer in, 200, 209
 United Kingdom in, 199, 205
 US in, 199–200, 202, 206–9
 US–BASIC agreement aftermath,
 209–12
 US–BASIC negotiations in, 206–9
- highly confrontational strategies. *See*
 rule-compliant strategies
 (confrontational), highly
 confrontational
- highly cooperative strategies. *See*
 rule-compliant strategies
 (cooperative), highly cooperative
- hostage issue, 26, 46–7, 78, 83, 255, 267
- incongruence, of power, 17–8, 256–7,
 256n8
- independence
 of Kosovo, 218, 219, 236, 238
 supervised, 216, 223
- India, 7, 10, 162–3, 165, 169, 174,
 182, 184
 in BASIC countries, 8, 199–200,
 206–9
 in climate change negotiations, 182,
 184, 194, 199–200, 203–5,
 206–9
 in Uruguay Round negotiations,
 154–5, 162, 163, 163–4, 164–5,
 174, 255
 single undertaking and, 148n10,
 173n51
 TRIPs and, 154–5, 164, 164n40, 169
- institutional change literature, 28–9
- institutional design literature, 27–8
- institutional effects literature, 25–6,
 26n54, 26n57
- institutional power, 252–3, 253n1
- institutions literature, 24–9, 24n46,
 25n49, 26n54, 26n57
- intellectual property rights (IPRs), 1,
 40, 41, 83, 145, 154, 155, 169, 171,
 172n49, 176, 254. *See also*
 trade-related aspects of
 intellectual property rights
- interdependence (economic), 95–6,
 95nn34–5, 96n36
- interdependent states negotiations,
 95–8
- international bargaining, 12n23, 51,
 107, 250. *See also* power, in
 international bargaining
 art of, 3, 3n11, 21, 23, 23n41
 as a process, 1, 2, 3n10, 7, 8, 11–12,
 12n23, 13, 13n24, 18–9, 23, 24,
 30, 43, 62, 81, 94, 257–8
- BATNA with. *See* best alternative to
 negotiated agreement (BATNA)
- definition of, 11, 11n19, 12n20
- material capabilities and. *See*
 material power
- multiple phases of. *See* bargaining
 phases
- time's role in, 18–19, 257–8
- international cooperation, 40n6
 cooperation problem, 51, 52
 defection against, 97, 98
 reciprocity and, 97
 strategic trust and, 54, 54n10, 55–6
 strategic uncertainty and, 52, 56
- international relations (IR), 2, 4
- interviews, on EU negotiations, 107–8,
 108n13, 108n15, 111, 113, 214–15
- IPR. *See* intellectual property rights
- IR. *See* international relations
- Iran, 2, 39, 75, 99, 231–2
- Israel, 1, 37, 47, 82–3, 84, 214
- issue addition, 86–7
- issue linkage strategies
 in Cancún COP negotiations,
 183–4
 in climate change negotiations,
 181–91
 confrontational, 26, 46–7, 78, 99,
 255, 267
 cooperative, 26, 47, 86–7, 92, 97–8,
 240–1
 in Copenhagen climate change
 negotiations, 203, 206–7
 costs of, 83–4, 98
 examples of, 46–7, 47, 86–7, 92
 holding issue hostage, 26, 46–7, 78,
 99, 255, 267

- issue addition, 86–7
 - issue linkage structure and, 85–9, 181–4
 - issue subtraction, 87
 - in Kosovo status process negotiations, 227–8, 244–5
 - limitations on use of, 80–1
 - typology of, 46–7
 - issue linkage structure. *See also*
 - differently valued issues;
 - non-differently valued issues
 - absolute/relative gains context and, 57n15, 88–9
 - in Copenhagen climate change negotiations, 181–4, 192–8, 203–4, 205, 207, 208
 - definition of, 48, 49–51
 - differently valued issues. *See*
 - differently valued issues
 - in EU negotiations, 111–2
 - and focal points, 52, 55–7, 60
 - hypotheses regarding, 57, 89
 - measurement of, 111–12, 151–2, 181–4, 270–6
 - non-differently valued issues. *See*
 - non-differently valued issues
 - in Services Directive negotiations, 126–9
 - strategic uncertainty and, 51–2
 - in Uruguay Round negotiations, 151–2, 159, 161
 - zone of agreement and, 26, 50–1, 111, 112, 151–2, 181, 198
- issue subtraction, 87
- Japan,
 - in climate change negotiations, 59, 179, 193, 193n24, 200–1, 207, 208
 - detainment of Chinese ship captain and, 46–7, 83
 - in GATT negotiations, 165
 - North Korea and, 44, 81
- Kosovo
 - Constitution of, 235, 235n67, 236, 239, 240
 - declaration of independence, 217, 217n5, 218, 225, 233, 235–6, 237, 238, 239
 - GDP of, 221
 - independence and, 217, 218, 219, 220, 221, 223, 228, 229, 230, 231, 235, 236, 237, 238
 - capabilities of, 221–2, 256
 - Russia and independence of, 224, 237
 - Serbia and independence of, 219, 221, 224, 227, 228, 238, 241
 - supervised independence, 216, 223
- Kosovo status process, 214, 215n1, 223n20, 252, 259
 - background of, 215–8, 222–3
 - bargaining power in, 219, 220, 231, 235, 237, 246
 - Contact Group with, 216, 224, 225, 226, 229, 231n55
 - Draft UNSC resolution and, 217, 228–34, 236
 - EU mission (EULEX) and, 217–18, 222, 225, 229, 234, 236, 238–9, 241, 243, 245, 256–7
 - Kosovo–Serbia negotiations over Ahtisaari proposal (2007), 216–17, 223–8
 - Kosovo–Serbia talks (2006), 216, 218–22
 - Kosovo–Serbia talks (late 2007), 217, 234–6
 - Russia relating to, 216, 217, 218, 219, 224, 224n27, 225–6, 229, 230, 231–2, 233, 234, 236, 237, 238, 239, 240–1, 244, 245, 247, 248, 256–7
 - summary of, 215–18
 - UNMIK and, 215–18, 215n1, 219, 221, 222–3, 225, 229, 234, 235–6, 235n67, 238, 238n70, 239, 240, 240–3, 243–5
 - UN Security Council negotiations over draft resolution (May 2007), 217, 228–34
 - UN Security Council negotiations over UNMIK reconfiguration (July 2008), 218, 240–3

Kosovo status process (*cont.*)

- UN Security Council negotiations over UNMIK reconfiguration (November 2008), 218, 243–5
- United States relating to, 216, 217, 219, 223, 224, 225, 226, 228–9, 230, 231–2, 233, 234, 236, 237, 240–1, 246, 247, 248, 256–7
- Kosovo War, 215
- Kosovo–Serbia negotiations over
 - Ahtisaari proposal (2007), 216–7, 223–8
 - bargaining power in, 225
 - bargaining strategies adopted in, 227–8
 - Contact Groups with, 224, 225, 226
 - contextual rules relating to, 225–6
 - EU involvement with, 223, 224–5, 226, 227–8
 - no agreement outcome at, 225–6
 - relative gains and, 226
 - Russian concerns with, 224, 224n27, 225, 226
 - security concern and, 224–5
 - status quo and, 225–6
 - supervised independence and, 216, 223
 - US concerns with, 225, 226
- Kosovo–Serbia talks (2006), 216, 218–22
 - bargaining power in, 219
 - bargaining strategies adopted in, 220–2
 - contextual rules relating to, 219–20
 - no-agreement outcome at, 219
 - relative gains and, 219–20
 - status quo and, 219, 220, 221, 222
- Kosovo–Serbia talks (late 2007), 217, 234–6
 - bargaining power in, 235
 - bargaining strategies adopted in, 235–6, 235nn66–7
 - EU involvement with, 234–5, 236
 - Russia involvement with, 234–5
 - status quo and, 235
 - US involvement with, 234–5, 236
- Kyoto Protocol negotiations, 57–61, 179

- critical importance of, 179
- developed countries in, 179
- developing countries in, 58, 60
- emission reduction targets with, 57–61, 179
- EU states in, 59–60, 179
- expansion of, 180
- issue-linkage structure and, 57–61
- United States in, 58, 59–60, 60–1, 179

LCA. *See* long-term cooperative action
 less differently valued issues. *See*
 non-differently valued issues
 long-term cooperative action (LCA),
 180, 192, 192n20, 194

Maldives, 211

- Malta–United Kingdom naval base negotiations, 64–6
- material capabilities. 16–7, 17–18, 90, 91, 185–7, 251, 252–3. *See also*
 material power
 - bargaining power and, 17–18, 26, 26n57, 63–4, 64n27, 64–5, 93, 252–7
 - credible use of, 16, 64, 65, 90, 91–2, 92n29, 255
 - definition of, 63
 - economic, 17, 63, 64, 83–4, 92, 92n29, 97, 119, 122, 158, 187, 201, 221, 226, 246, 254–5
 - hypotheses regarding, 94, 100
 - of Kosovo, 221–2
 - military, 17, 63, 64, 72, 74, 81–3, 84, 91, 97, 221, 226, 261
 - rule-changing limitations and, 79, 81–4
 - use of rule-changing strategies and, 16–17, 18, 84, 90, 93, 94, 178, 185, 187, 187n15, 189–91, 213, 221, 231, 246, 251, 252, 254–7
 - use of rule-compliant strategies and, 26, 64–5, 163, 253, 254
- material power, 17–18, 28, 252, 282. *See also* material capabilities
 - bargaining power and, 17–18, 252–7

- in climate change negotiations, 181, 185–6, 186n12, 187, 187n15, 188, 189, 212
- definition of, 17
- in EU negotiations, 119, 122, 126, 142
- in GATT negotiations, 158, 160, 176–7, 254
- hypotheses regarding, 94, 100
- in Kosovo status process, 246
- use of rule-changing strategies and, 16–17, 18, 84, 90, 93, 94, 178, 185, 187, 187n15, 189–91, 213, 221, 231, 246, 251, 252, 254–7
- use of rule-compliant strategies and, 26, 64–5, 163, 253, 254
- Mexico
 - material capabilities of, 186, 186n12
 - membership in Environmental Integrity Group, 194n29
 - New River negotiations with United States and, 97–8
 - use of rule-changing strategy, 183–4, 185–6
- Middle East, 2
- military capabilities, 17, 63, 64, 72, 74, 81–3, 84, 91, 97, 221, 226, 261
- Ministerial Conference in Doha (2001). *See* Doha Round
- more differently valued issues. *See* differently valued issues
- Multifibre Arrangement, 148
- multilateral sanctions, 2, 39, 75, 99
- multilevel model, 119, 119n37, 158, 187
- NAFTA. *See* North American Free Trade Agreement
- nationally appropriate mitigation actions (NAMAs), 192, 192n20, 194–5
- NATO. *See* North American Treaty Organization
- negotiation analysis literature, 12n23, 19, 22–4, 23nn44–5
- negotiations. *See also* bargaining; climate change negotiations; decision-making in internal EU negotiations; international bargaining; Kosovo–Serbia negotiations over Ahtisaari proposal (2007); Kosovo–Serbia talks (2006); Kosovo–Serbia talks (late 2007); Kyoto Protocol negotiations; UN Security Council negotiations at Kosovo–Serbia talks (late 2007); UN Security Council negotiations on UNMIK reconfiguration (July 2008); UN Security Council negotiations on UNMIK reconfiguration (November 2008); UN Security Council negotiations over draft resolution (May 2007); UN Security Council negotiations at Kosovo–Serbia talks (late 2007); Uruguay Round negotiations bargaining and terminology of, 11–12, 11n19
- Financial Perspective (2007–13) negotiations, 135–40
- Green Room negotiations in Copenhagen, 200, 203–6, 203n42
- between interdependent states, 95–8
- Malta–United Kingdom naval base negotiations, 64–6
- between non-interdependent states, 98–100
- Services Directive negotiations, 106–7, 125–35, 126n50, 257, 259
- US–BASIC, 206–9
- New River, 97–8
- New Strategic Arms Reduction Treaty (New START), 72–4, 73nn41–2
- New Zealand, 162, 163
 - as Cairns Group member, 162
 - as Umbrella Group member, 193n24
- no-agreement alternative, 4, 14–17, 22, 22n38, 36, 42n10, 65, 67, 70–1, 74, 253. *See also* best alternative to negotiated agreement (BATNA)
- and bargaining power, 17–18
- as bargaining rule, 61–4, 113, 122, 129–30, 150, 152–3
- and confrontational strategies, 36, 37–8, 116, 122, 253

- no-agreement alternative (*cont.*)
 - in climate change negotiations, 185, 201, 202, 213
 - definition of, 4, 42n10
 - in EU negotiations, 113, 116
 - in Iran–United States negotiations, 75, 99
 - in Kosovo status process, 219, 225, 226, 229–30, 234, 235, 237, 242, 243, 246, 247, 248
 - in North Korea negotiations, 261
 - rule-changing strategies and, 5–7, 10, 17, 21n32, 22, 22n40, 44–5, 63, 64, 92, 145, 171, 174, 185, 201, 202, 213, 226, 234, 242, 246, 247, 248, 261
 - in TRIPs negotiations, 10
 - in Uruguay Round negotiations, 145, 150, 152–3, 159, 161, 171, 174
- no-agreement outcome. *See* best alternative to negotiated agreement (BATNA); no-agreement alternative
- non-cooperative bargaining strategies. *See* confrontational bargaining strategies.
- non-differently valued issues. *See also* differently valued issues; issue linkage structure
 - in climate change negotiations, 182, 185n10, 198, 199, 201, 204, 213
 - definition of, 50, 50n2
 - differently valued issues v., 50–1, 57
 - effect on bargaining strategies (empirical), 120–2, 131–3, 159, 161–2, 189, 209, 241–2, 247
 - effect on bargaining strategies (theoretical), 52–7, 85–8, 89
 - in EU negotiations, 112, 120–2, 126–8
 - ideal type, 50
 - in Kosovo status process negotiations, 241–2, 247
 - in Kyoto Protocol negotiations, 57–9
 - measurement of, 111–12, 151–2, 181–4
 - in Uruguay Round negotiations, 159, 161
 - and zone of agreement, 50–1, 111, 181, 198
- non-interdependent states negotiations, 98–100
- North American Free Trade Agreement (NAFTA), 97–8
- North American Treaty Organization (NATO), 215, 216, 223, 225, 226
- North Korea, 44, 81–2, 90–2, 261–2
- not differently valued issues. *See* non-differently valued issues
- Obama, Barack, 39, 73n42, 202, 204, 206–9
- Pakistan, 148, 153, 154
- Palestine, 2, 37, 214
- Pershing, Jonathan, 211–12
- pharmaceutical industry, 1, 9, 10, 41, 169, 254
- phases of bargaining. *See* bargaining phase
- play by rules. *See* rule-compliant strategies; rule-compliant strategies (confrontational); rule-compliant strategies (cooperative)
- Political and Security Committee (PSC), 105n1, 108, 214
- power. *See* bargaining power; institutional power; material power
- powerful state's valuation of agreement. *See* valuation of agreement (by powerful state).
- process of bargaining, 1, 2, 3n10, 7, 8, 11–2, 12n23, 13, 13n24, 18–9, 23, 24, 30, 43, 62, 81, 94, 257–8
- Protocol of Provisional Application, 151
- PSC. *See* Political and Security Committee
- Punta del Este Declaration, 147nn6–7, 148, 148n10, 172n49, 173n51
- reciprocity, 80, 97–8, 98–9. *See also* exchange of concessions

- relative gains, 14–5, 122, 124n46, 154.
See also absolute/relative gains
 context
 definition of, 66
 in EU negotiations, 114–16, 123–4, 130–1
 hypotheses regarding, 76, 94, 100
 in Kosovo status process
 negotiations, 220–1, 224–6, 231, 235, 241, 244
 powerful state values agreement and, 70, 74, 76, 93–4, 130–1, 165–71, 220, 225–6, 231, 235, 237, 241, 244, 246–7
 Services Directive and, 129–31
 in Uruguay Round negotiations, 153–5, 165–71
 versus zero-sum negotiations, 115n30, 155n24
 Republic of Korea (South Korea). 44, 81, 156, 165, 194n29, 197, 261
 Republic of Yugoslavia, 215, 219, 229
 rule-changing issue linkage strategies. *See* issue linkage strategies
 rule-changing strategies, 3, 8, 10, 16–7, 42, 42n9, 78, 251–2. *See also* BATNA-altering strategies; issue linkage strategies; rule-changing strategies (confrontational); rule-changing strategies (cooperative)
 goal of, 78, 203
 limitations on use of, 79–81
 hypotheses regarding, 89, 94, 100
 material capabilities and, 16, 17–18, 81–4, 255–6
 typology of, 42–7
 rule-changing strategies (confrontational), 5–6, 7, 78, 89, 95–6, 229–30, 260–2. *See also* BATNA-altering strategies; issue linkage strategies, confrontational
 in climate change negotiations, 212
 costs associated with, 2, 84, 96
 in EU negotiations, 45, 141–2
 examples of, 2, 44–5, 46–7, 82, 90–1, 261–2
 issue linkage strategies and. *See* issue linkage strategies
 in Kosovo status process
 negotiations, 233–4, 235–6, 236–40
 sanctions and. *See* sanctions; economic sanctions; multilateral sanctions
 in Services Directive negotiations, 107, 141–2
 threats and. *See* threats
 in Uruguay Round negotiations, 171–5
 rule-changing strategies (cooperative), 5–6, 78, 85, 92–3, 95–7. *See also* issue linkage strategies, cooperative
 in climate change negotiations, 199–200, 202–3, 206–9, 211
 costs of, 83–4, 98
 examples of, 1, 47, 92, 92n29, 98, 211–12, 227
 issue linkage and, 240–1
 in Kosovo status process
 negotiations, 227–8, 244–5
 rule-compliant strategies, 3–4, 13–16, 250–1. *See also* rule-compliant strategies (confrontational); rule-compliant strategies (cooperative)
 hypotheses regarding, 57, 76
 typology of, 35–41
 rule-compliant strategies (confrontational), 3–4, 5, 6, 9, 48, 259, 260
 in climate change negotiations, 200–3
 in EU negotiations, 107, 116–17, 131–3, 138–40
 examples of, 2, 7–9, 37–8, 58–9, 71, 260
 in Financial Perspective (2007–2013) negotiations, 138–40, 138nn74–6
 highly confrontational, 35–8

- rule-compliant strategies
 - (confrontational) (*cont.*)
 - in Kosovo status process negotiations, 220–2, 232, 242–3
 - in Kyoto Protocol negotiations, 58–9
 - in Services Directive negotiations, 131–3
 - somewhat confrontational, 38
 - in Uruguay Round negotiations, 157–8, 162–5, 169–71
 - veto and, 2, 5, 6, 7, 9, 26, 27, 36, 37, 63, 116, 117, 138–9, 142, 157, 164, 171, 200, 205, 209, 219, 224, 232, 233, 253, 254
- rule-compliant strategies (cooperative), 5, 6, 8, 9, 11, 48, 244, 259
 - in Copenhagen climate change negotiations, 208–9
 - conditions for, 250
 - costs of, 85
 - in EU negotiations, 86–7, 107, 117–18, 133–5, 138–40
 - examples of, 1, 7–9, 39–40, 41, 60–1, 64, 72–4
 - in Financial Perspective (2007–13) negotiations, 138–40
 - highly cooperative, 39–40, 40n6, 56
 - issue linkage and, 86–7
 - in Kosovo status process negotiations, 244–5
 - in Kyoto Protocol negotiations, 59–60
 - in Services Directive negotiations, 133–5
 - somewhat confrontational, 40–1
 - in Uruguay Round negotiations, 156–7, 162–5, 169–71
- rule-compliant/rule-changing framework, 11–13, 13–19, Part I, 258
 - bargaining over time, 18–19, 257–8
 - implications of, 17–19
 - two-part analysis, 13–17
- rules. *See* rules of the game
- rules of the game, 3, 4n13, 6, 8, 85, 120, 250, 251
 - absolute/relative gains context as, 66–70
 - BATNA as, 61–2
 - changes in, 5, 8, 11, 16–17, 19, 21–2, 26
 - in climate change context, 181–7
 - definition of, 3, 48–9
 - in EU context, 111–6, 122–3, 123n44, 137n32
 - in Financial Perspective (2007–2013) negotiations, 136–8
 - in game-theory, 4n13, 20–1
 - impact of, 10, 13, 25, 26, 29, 30
 - issue linkage structure as, 49–51
 - for individual bargaining interactions, 145
 - in Kosovo status process negotiations, 219–20, 225–6, 229–31, 235, 240–2, 243–4
 - in Services Directive negotiations, 107, 126–31
 - in Uruguay Round negotiations, 150–5, 150n16, 161–2, 169
- Russia, 37, 39, 41, 72–4, 193, 193n24, 198, 200–1
 - Kosovo status process and, 216, 217, 218, 219, 224, 224n27, 225–6, 229, 230, 231–2, 233, 234, 236, 237, 238, 239, 240–1, 244, 245, 247, 248, 256–7
- sanctions. 1, 2, 17, 26, 37, 43, 44–5, 65, 75, 80, 84, 86–7, 90, 99, 231, 255. *See also* economic sanctions; multilateral sanctions
- SBI. *See* Subsidiary Body for Implementation
- SBSTA. *See* Subsidiary Body on Scientific and Technological Advice
- self-determination, 214–15, 226
- Serbia. *See* Kosovo status process
- Services Directive, 106, 107, 125–35, 257
 - agreement valuation by powerful states and, 130–1
 - bargaining power and, 129–30

- confrontational strategies in, 131–3, 259
- cooperative strategies in, 133
- focal point and, 133–4
- issue linkage structure and, 126–9
- relative gains and, 130
- strategies adopted, 131–5, 259
- set of available alternatives to agreement. *See* no-agreement alternative
- side payments, 1, 26, 46, 47, 85, 88, 92, 92n29, 98, 211, 212, 221, 227
- somewhat confrontational strategies. *See* rule-compliant strategies (confrontational), somewhat confrontational
- somewhat cooperative strategies. *See* rule-compliant strategies (cooperative), somewhat cooperative
- South Africa, 8, 44–5, 199–200, 206, 207
- South Korea. *See* Republic of Korea
- South Sudan, 214
- state sovereignty, 40, 66, 214–15, 219–20, 224, 226, 229, 241, 252
- statistical analysis,
 - in climate change negotiations, 187–91
 - in EU negotiations, 118–25
 - multilevel model, 119, 119n37, 158, 187
 - results of, 120–5, 159–61, 165–8, 188, 189–91
 - set-up of, 118–20, 158, 187–9
 - in Uruguay Round negotiations, 158–61
- strategic trust. *See* international cooperation, strategic trust and
- strategic uncertainty. *See* international cooperation, strategic uncertainty and
- strategies. *See* bargaining strategies; rule-changing strategies; rule-changing strategies (confrontational); rule-changing strategies (cooperative); rule-compliant strategies (confrontational); rule-compliant strategies (cooperative)
- structural and cohesion funds, 135–6, 140, 140n81
- Subsidiary Body for Implementation (SBI), 178
- Subsidiary Body on Scientific and Technological Advice (SBSTA), 178
- Sudan, 210, 214
- supervised independence, 216, 223
- Thailand, 165
- threats, 8–9, 22, 43, 46, 64, 71, 79, 200, 205, 211, 219, 224, 246
 - costs of, 80, 84
 - credibility of. *See* credible threat
 - of force, 16, 43, 44, 81, 90–1, 91–2, 221, 261
 - to go it alone, 26, 27, 43, 45, 82, 83, 232, 233
 - material capabilities and, 81–4, 255
 - of sanctions, 2, 26, 40, 43, 44–5, 64, 83, 99
 - to veto, 2, 5, 6, 7, 9, 27, 36, 63, 116, 200, 209, 219, 224, 232, 253
- trade in goods, 127, 147, 148, 157n28, 174
 - in EU, 127
 - in Uruguay Round negotiations, 147, 148, 157n28, 174
- trade in services
 - in EU, 106, 107, 108n15, 117, 125–6, 127, 130
 - in Uruguay Round negotiations, 144, 145, 147, 148, 154, 157, 161, 172, 174, 175, 176
- trade-related aspects of intellectual property rights (TRIPs), 1, 8–11, 144, 147, 154, 157, 161, 164, 169, 170–1, 172, 173, 172n49, 174, 175–6, 254, 255
- trade-related investment measures (TRIMS), 144, 147, 154, 157, 161, 172, 173, 174, 175, 176

- TRIMS. *See* trade-related investment measures
- TRIPS. *See* trade-related aspects of intellectual property rights
- typology of bargaining strategies. *See* bargaining strategies typology
- Umbrella Group, 193, 193n24, 194
- UN Framework Convention on Climate Change (UNFCCC), 178, 179, 191, 198, 202, 212
- UN Interim Administration Mission in Kosovo (UNMIK), 215–18, 215n1, 219, 221, 222–3, 225, 229, 234, 235–6, 235n67, 238, 238n70, 239, 240, 240–3, 243–5
- UN Security Council negotiations over draft resolution (May 2007), 217, 228–34
- bargaining strategies adopted in, 232–4, 232n59
- EU involvement with, 228, 229–30, 230–2, 233
- no-agreement outcome at, 229–30
- relative gains and, 231
- Russian involvement with, 229, 230, 231–4, 232n56
- US involvement with, 228–34
- UN Security Council negotiations over UNMIK reconfiguration (July 2008), 218, 240–3
- bargaining strategies adopted at, 242–3
- EU involvement with, 240–3
- no-agreement outcome at, 240–1
- US involvement with, 240–1, 243
- UN Security Council negotiations over UNMIK reconfiguration (November 2008), 218, 243–5
- bargaining strategies adopted at, 244–5
- EU involvement with, 243–5
- no-agreement outcome at, 243
- Russian involvement with, 244, 245
- UNFCCC. *See* UN Framework Convention on Climate Change
- United Kingdom, 45, 64–6, 83, 86–7, 114, 117, 126n49, 135, 136, 137, 138–9, 199, 205, 216, 219, 223, 229, 233, 236, 260
- United Nations Security Council (UNSC), 2, 37, 39, 75, 82, 99, 240, 245
- and Kosovo status process, 215, 217, 218, 219, 224, 228, 229, 231n55, 232n59, 233, 239, 240, 242, 243, 244, 245, 247, 248
- United States
- agricultural trade and, 161
- Camp David Accords and, 1, 47, 82, 84
- climate change negotiations and, 8, 10, 58–61, 179, 182, 182n4, 186n12, 193, 193n24, 198, 199–200, 202, 206–12
- confrontational strategies of, 1–2, 9, 37–8, 40, 45, 71, 82, 157, 164, 255
- cooperative strategies of, 1–2, 9, 39–40, 41, 47, 97–8
- Iran and, 2, 75, 99, 231
- Kosovo status process and, 216, 217, 219, 223, 224, 225, 226, 228–9, 230, 231–2, 233, 234, 236, 237, 240–1, 246, 247, 248, 256–7
- Mexico and, 97–8
- New START and, 72–4, 73nn41–2
- North Korea and, 44, 81–2, 90–2, 261
- single undertaking and, 149, 172–7
- TRIPs and, 1–2, 8–10, 83, 255
- UNMIK. *See* UN Interim Administration Mission in Kosovo
- UNSC. *See* United Nations Security Council
- UNSC Resolution 1244, 215, 216n2, 217, 218, 219, 220, 221, 229, 231, 233, 234, 240n82, 241, 243
- Uruguay Round negotiations, 9, 40, 144, 145–6, 147–77
- absolute/relative gains context of, 153–5, 153n20, 155n24, 159–61, 161–3, 165–71

- agenda for, 40, 83
- background of, 147–50, 147nn6–8
- balance of payment issues in, 151–2, 163
- beneficial BATNA in, 152–3, 159–61, 161n33, 162–5, 165, 166, 169–70
- confrontational (rule-compliant) strategies in, 156–8, 159–61, 162–5, 168, 169–71
- cooperative (rule-compliant) strategies in, 156–8, 159–61, 162–5, 168, 169–71
- developed countries in, 145, 150, 151–2, 154–5, 157, 161, 162, 163–4, 170–6
- developing countries in, 144–6, 148–9, 151–2, 154–5, 157, 157n28, 161–4, 169, 170, 172, 172nn48–9, 174–6
- empirical analysis of, 155–71
- issue linkage structure with, 151–2
- phases of, 145, 146n4, 147–8, 149, 150, 151, 156, 157, 158, 163, 164, 171, 174
- rule-changing strategies in, 146, 146n4, 149, 171–7
- rule-compliant strategies in, 156–8, 159–61, 162–5, 168, 169–71
- rules of game in, 150–5, 150n16
- single undertaking and, 148n10, 149, 150, 171–7, 176n59
- trade in goods issues, 147, 148, 157n28, 174
- trade in services issues, 144, 145, 147, 148, 154, 157, 161, 172, 174, 175, 176
- TRIPS and, 8–11, 41, 144, 147, 169, 254–5, 254n5
- US–BASIC negotiations, 206–9
- valuation of agreement (by powerful state)
 - analysis of, 67, 68, 70, 74, 93–4
 - in EU negotiations, 130–1
 - hypotheses regarding, 76, 94, 100
 - hypothesis testing for, 165–71
 - in Kosovo status process negotiations, 220, 225–6, 231, 235, 237, 241, 244, 246–7
 - in Uruguay Round, 165–171
- veto, 2, 5, 6, 7, 9, 26, 27, 36, 37, 63, 116, 117, 138–9, 142, 157, 164, 171, 200, 205, 209, 219, 224, 232, 233, 253, 254
- Wen Jiabao (China), 206–7
- World Trade Organization (WTO), 1, 9, 23n45, 27, 38, 41, 80, 103, 144, 144n1, 146, 176, 251, 262
- zero-sum, 55n12, 67n31, 114–15, 115n30, 116, 130, 155n24, 220
 - versus relative gains, 115n30, 155n24
- zone of agreement, 51, 67, 69, 111, 152, 181
 - absolute/relative gains context and, 67–9, 72, 74
 - issue linkage structure and, 26, 50–1, 111, 112, 151–2, 181, 198

CAMBRIDGE STUDIES IN INTERNATIONAL RELATIONS

- 120 A. Maurits van der Veen
Ideas, interests and foreign aid
- 119 Emanuel Adler and Vincent Pouliot
International practices
- 118 Ayşe Zarakol
After defeat
How the East learned to live with the West
- 117 Andrew Phillips
War, religion and empire
The transformation of international orders
- 116 Joshua Busby
Moral movements and foreign policy
- 115 Séverine Autesserre
The trouble with the Congo
Local violence and the failure of international peacebuilding
- 114 Deborah D. Avant, Martha Finnemore and Susan K. Sell
Who governs the globe?
- 113 Vincent Pouliot
International security in practice
The politics of NATO-Russia diplomacy
- 112 Columba Peoples
Justifying ballistic missile defence
Technology, security and culture
- 111 Paul Sharp
Diplomatic theory of international relations
- 110 John A. Vasquez
The war puzzle revisited
- 109 Rodney Bruce Hall
Central banking as global governance
Constructing financial credibility
- 108 Milja Kurki
Causation in international relations
Reclaiming causal analysis
- 107 Richard M. Price
Moral limit and possibility in world politics
- 106 Emma Haddad
The refugee in international society
Between sovereigns
- 105 Ken Booth
Theory of world security
- 104 Benjamin Miller
States, nations and the great powers
The sources of regional war and peace

- 106 Emma Haddad
The refugee in international society
Between sovereigns
- 105 Ken Booth
Theory of world security
- 104 Benjamin Miller
States, nations and the great powers
The sources of regional war and peace
- 103 Beate Jahn (ed.)
Classical theory in international relations
- 102 Andrew Linklater and Hidemi Suganami
The English School of international relations
A contemporary reassessment
- 101 Colin Wight
Agents, structures and international relations
Politics as ontology
- 100 Michael C. Williams
The realist tradition and the limits of international relations
- 99 Ivan Arreguín-Toft
How the weak win wars
A theory of asymmetric conflict
- 98 Michael Barnett and Raymond Duvall
Power in global governance
- 97 Yale H. Ferguson and Richard W. Mansbach
Remapping global politics
History's revenge and future shock
- 96 Christian Reus-Smit
The politics of international law
- 95 Barry Buzan
From international to world society?
English School theory and the social structure of globalisation
- 94 K. J. Holsti
Taming the sovereigns
Institutional change in international politics
- 93 Bruce Cronin
Institutions for the common good
International protection regimes in international security
- 92 Paul Keal
European conquest and the rights of indigenous peoples
The moral backwardness of international society
- 91 Barry Buzan and Ole Wæver
Regions and powers
The structure of international security
- 90 A. Claire Cutler
Private power and global authority
Transnational merchant law in the global political economy

- 89 Patrick M. Morgan
Deterrence now
- 88 Susan Sell
Private power, public law
The globalization of intellectual property rights
- 87 Nina Tannenwald
The nuclear taboo
The United States and the non-use of nuclear weapons since 1945
- 86 Linda Weiss
States in the global economy
Bringing domestic institutions back in
- 85 Rodney Bruce Hall and Thomas J. Biersteker (eds.)
The emergence of private authority in global governance
- 84 Heather Rae
State identities and the homogenisation of peoples
- 83 Maja Zehfuss
Constructivism in international relations
The politics of reality
- 82 Paul K. Ruth and Todd Allee
The democratic peace and territorial conflict in the twentieth century
- 81 Neta C. Crawford
Argument and change in world politics
Ethics, decolonization and humanitarian intervention
- 80 Douglas Lemke
Regions of war and peace
- 79 Richard Shapcott
Justice, community and dialogue in international relations
- 78 Phil Steinberg
The social construction of the ocean
- 77 Christine Sylvester
Feminist international relations
An unfinished journey
- 76 Kenneth A. Schultz
Democracy and coercive diplomacy
- 75 David Houghton
US foreign policy and the Iran hostage crisis
- 74 Cecilia Albin
Justice and fairness in international negotiation
- 73 Martin Shaw
Theory of the global state
Globality as an unfinished revolution
- 72 Frank C. Zagare and D. Marc Kilgour
Perfect deterrence
- 71 Robert O'Brien, Anne Marie Goetz, Jan Aart Scholte and Marc Williams
Contesting global governance
Multilateral economic institutions and global social movements

- 70 Roland Bleiker
Popular dissent, human agency and global politics
- 69 Bill McSweeney
Security, identity and interests
A sociology of international relations
- 68 Molly Cochran
Normative theory in international relations
A pragmatic approach
- 67 Alexander Wendt
Social theory of international politics
- 66 Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds.)
The power of human rights
International norms and domestic change
- 65 Daniel W. Drezner
The sanctions paradox
Economic statecraft and international relations
- 64 Viva Ona Bartkus
The dynamic of secession
- 63 John A. Vasquez
The power of power politics
From classical realism to neotraditionalism
- 62 Emanuel Adler and Michael Barnett (eds.)
Security communities
- 61 Charles Jones
E. H. Carr and international relations
A duty to lie
- 60 Jeffrey W. Knopf
Domestic society and international cooperation
The impact of protest on US arms control policy
- 59 Nicholas Greenwood Onuf
The republican legacy in international thought
- 58 Daniel S. Geller and J. David Singer
Nations at war
A scientific study of international conflict
- 57 Randall D. Germain
The international organization of credit
States and global finance in the world economy
- 56 N. Piers Ludlow
Dealing with Britain
The Six and the first UK application to the EEC
- 55 Andreas Hasenclever, Peter Mayer and Volker Rittberger
Theories of international regimes
- 54 Miranda A. Schreurs and Elizabeth C. Economy (eds.)
The internationalization of environmental protection
- 53 James N. Rosenau
Along the domestic-foreign frontier
Exploring governance in a turbulent world

- 52 John M. Hobson
The wealth of states
A comparative sociology of international economic and political change
- 51 Kalevi J. Holsti
The state, war, and the state of war
- 50 Christopher Clapham
Africa and the international system
The politics of state survival
- 49 Susan Strange
The retreat of the state
The diffusion of power in the world economy
- 48 William I. Robinson
Promoting polyarchy
Globalization, US intervention, and hegemony
- 47 Roger Spegele
Political realism in international theory
- 46 Thomas J. Biersteker and Cynthia Weber (eds.)
State sovereignty as social construct
- 45 Mervyn Frost
Ethics in international relations
A constitutive theory
- 44 Mark W. Zacher with Brent A. Sutton
Governing global networks
International regimes for transportation and communications
- 43 Mark Neufeld
The restructuring of international relations theory
- 42 Thomas Risse-Kappen (ed.)
Bringing transnational relations back in
Non-state actors, domestic structures and international institutions
- 41 Hayward R. Alker
Rediscoveries and reformulations
Humanistic methodologies for international studies
- 40 Robert W. Cox with Timothy J. Sinclair
Approaches to world order
- 39 Jens Bartelson
A genealogy of sovereignty
- 38 Mark Rupert
Producing hegemony
The politics of mass production and American global power
- 37 Cynthia Weber
Simulating sovereignty
Intervention, the state and symbolic exchange
- 36 Gary Goertz
Contexts of international politics
- 35 James L. Richardson
Crisis diplomacy
The Great Powers since the mid-nineteenth century

- 34 Bradley S. Klein
Strategic studies and world order
The global politics of deterrence
- 33 T. V. Paul
Asymmetric conflicts
War initiation by weaker powers
- 32 Christine Sylvester
Feminist theory and international relations in a postmodern era
- 31 Peter J. Schraeder
US foreign policy toward Africa
Incrementalism, crisis and change
- 30 Graham Spinardi
From Polaris to Trident
The development of US Fleet ballistic missile technology
- 29 David A. Welch
Justice and the genesis of war
- 28 Russell J. Leng
Interstate crisis behavior, 1816–1980
Realism versus reciprocity
- 27 John A. Vasquez
The war puzzle
- 26 Stephen Gill (ed.)
Gramsci, historical materialism and international relations
- 25 Mike Bowker and Robin Brown (eds.)
From cold war to collapse
Theory and world politics in the 1980s
- 24 R. B. J. Walker
Inside/outside
International relations as political theory
- 23 Edward Reiss
The strategic defense initiative
- 22 Keith Krause
Arms and the state
Patterns of military production and trade
- 21 Roger Buckley
US–Japan alliance diplomacy 1945–1990
- 20 James N. Rosenau and Ernst-Otto Czempiel (eds.)
Governance without government
Order and change in world politics
- 19 Michael Nicholson
Rationality and the analysis of international conflict
- 18 John Stopford and Susan Strange
Rival states, rival firms
Competition for world market shares
- 17 Terry Nardin and David R. Mapel (eds.)
Traditions of international ethics

- 16 Charles F. Doran
Systems in crisis
New imperatives of high politics at century's end
- 15 Deon Geldenhuys
Isolated states
A comparative analysis
- 14 Kalevi J. Holsti
Peace and war
Armed conflicts and international order 1648–1989
- 13 Saki Dockrill
Britain's policy for West German rearmament 1950–1955
- 12 Robert H. Jackson
Quasi-states
Sovereignty, international relations and the third world
- 11 James Barber and John Barratt
South Africa's foreign policy
The search for status and security 1945–1988
- 10 James Mayall
Nationalism and international society
- 9 William Bloom
Personal identity, national identity and international relations
- 8 Zeev Maoz
National choices and international processes
- 7 Ian Clark
The hierarchy of states
Reform and resistance in the international order
- 6 Hidemi Suganami
The domestic analogy and world order proposals
- 5 Stephen Gill
American hegemony and the Trilateral Commission
- 4 Michael C. Pugh
The ANZUS crisis, nuclear visiting and deterrence
- 3 Michael Nicholson
Formal theories in international relations
- 2 Friedrich V. Kratochwil
Rules, norms, and decisions
On the conditions of practical and legal reasoning in international relations and domestic affairs
- 1 Myles L. C. Robertson
Soviet policy towards Japan
An analysis of trends in the 1970s and 1980s